

BARBADOS.

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Jurisdiction

No. 2663 of 2002

BETWEEN

ARNOLD PHILLIPS	Plaintiff
AND	
MARIA BOYCE	First Defendant
PSMT (BARBADOS) INC.	Second Defendant

AND BETWEEN

No. 2664 of 2002

ROSALIND BELGRAVE	Plaintiff
AND	
MARIA BOYCE	First Defendant
PSMT (BARBADOS) INC	Second Defendant

AND BETWEEN

No. 2665 of 2002

VICKIE KNIGHT – BENTHAM	Plaintiff
AND	
MARIA BOYCE	First Defendant
PSMT (BARBADOS) INC	Second Defendant

Before the Honourable Mr. Justice Christopher Blackman, G.C.M, Judge of the High Court.

2004: December 14, 15, 16 and 17

2005: March 10

Mr. Brian Weekes in association with Miss Karen Cole for the Plaintiffs

Mr. Mitchell Codrington in association with Miss Traece Codrington for the Defendants

DECISION

THE FACTS:

[1] The Plaintiffs were until August 2002 employees of the Second Defendant, when their services were terminated for sundry reasons, none of which were because of any acts, or suspected acts of dishonesty on the part of the Plaintiffs. Knowledge of the respective terminations was commonly known amongst the employees of the Second Defendant although the specific reasons for their terminations were not known.

[2] The Plaintiffs allege that on or about 1st September 2002 at a staff meeting held at the premises of the Second Defendant, the first Defendant in her capacity as servant and/or agent of the Second Defendant spoke and published the following words in the presence and hearing of the employees of the Second Defendant:

“I know that a lot of people are uncomfortable not knowing whether or not they are going to be working at the warehouse because I have received a lot of phone calls at home, on my personal phone from employees asking whether or not they have a job. I am not pleased at all having to come into a new position and then having to fire so many people for stealing.”

[3] The Plaintiffs allege that the words “**I am not pleased at all having to come into a new position and then having to fire so many for stealing**” referred to them and consequently they filed separate actions for defamation which were later consolidated.

[4] **Evidence of Mr. Phillips’**

Mr. Phillips testified that he had been the Security Manager of PSMT (Barbados) Inc, (sometimes called PriceMart) the Second Defendant from 2nd August, 2001 until August 7th, 2002 when he was informed by a letter from Maria Boyce, the First Defendant that his services were no longer required by the Second Defendant. Prior to joining PriceMart he had been a member of the Royal Barbados Police Force for 11 years, leaving in the rank of Constable, and thereafter had been an Insurance Underwriter for 3 years.

[5] Mr. Phillips said that he had instituted the action as a result of statements brought to his attention that Miss Boyce, at a meeting at the premises of PriceMart, had said that she was sorry to have to fire so many people for stealing. He had not been terminated for stealing.

Persons had called him at home in relation to his dismissal and inquired whether it was connected with stealing. Mr. Phillips said that as a result of the statement by Miss Boyce, the interpretation by all present at the meeting and to his understanding by members of the public, was to the effect that he had been dismissed for stealing. He stated that this had had a devastating effect on his professional life and to the date of trial, he had been

unsuccessful in securing a job.

- [6] **Under Cross-Examination**, Mr. Phillips said that his letter of termination had stated that the reasons for his termination was gross insubordination and the unacceptable high incidences of shrinkage in the merchandise of the company. He maintained that from the nature of the questions asked, the circumstances of his termination by PriceMart was a factor in the interviews which he had had. However, while he had applied to several places for positions in Security Management or Security Training, he had only been granted two interviews, one with Royal Pavilion and the other with World Cup Cricket. He said that at Royal Pavilion he was queried as to why he was no longer with PriceMart, but this relationship did not come up in the interview with World Cup Cricket.

[7] **Evidence of Rosalind Belgrave**

Ms. Belgrave testified that from June 2001 until August 2002, she had been employed as a Manager at PriceMart. She had worked previously at Julie'N as Director of Operations. Subsequent to her termination, it had been brought to her attention that a statement had been made at a meeting at PriceMart by Ms. Boyce that staff members had been fired for stealing. She said that she had been called at home by employees whose names she could not recall, who stated that they were not aware that she had been involved in the alleged stealing at PriceMart. Her response was that if the statement was made, it was untrue. While she was aware that there were issues of stealing at PriceMart, she had never been spoken to in relation to this issue.

- [8] **Under cross-examination**, Ms. Belgrave said that Ms. Lisanne Benjamin, Ms. Vickie Cox and Ms. Laura Husbands were among the persons who had called her to report what had been said at the meeting. In particular, she said that Laura Husbands had told her that a statement was made that persons had been fired for stealing. To her knowledge, her termination, which came as a surprise, was related to a restructuring policy at PriceMart, but her letter of dismissal only said that her services were no longer required. Nothing had ever been said to her about stealing but she believed that Ms. Boyce had said something that implicated her in stealing. She had been aware of an investigation, of which she was not part, and that as a result a number of persons had been dismissed for stealing. These dismissals had taken place shortly before she left.

[9] **Evidence of Vickie Knight-Bentham**

Mrs. Knight-Bentham said that she had been employed by the Second Defendant in July 2001 initially as an Assistant Human Resource/Administrative Manager and after two months had been promoted to H.R Manager. She held a Bachelor of Arts degree on Behavioural Sciences from the City University of New York, and prior to joining PriceMart, had worked for four and a half years as Human Resources Manager at Grand Barbados. On 7th August, 2002 she received a letter advising her that her services would no longer be required. She was not terminated for stealing.

- [10] Mrs. Knight-Bentham gave some details of her duties which

included dealing with the termination of employees. To her recollection, these included a number of managers, but she had not personally dealt with the termination of Arnold Phillips. As far as she was aware, fifteen persons had been terminated in August.

- [11] On September 2nd, 2002 she had received a call from Natasha Nadur-Haloute. In that call she was told of a meeting held the previous day at PriceMart, where Maria Boyce made a

statement that she was sorry to fire so many for stealing, calling them a cancer. As a result of the statement made by Ms. Boyce on September 1st, 2002 there had been some humiliation. One of her neighbours had commented that her boss thought they were all thieves; at an interview with CCB, the interviewer mentioned that they had heard rumors that a whole lot of managers had been terminated for stealing. In her current job with the Gems of Barbados in Human Resources, which she considered had been “a step back”, her boss had wanted to know if the rumors about theft were true. She said that she made it clear both to the CCB interviewer and her current boss that she had no involvement in any stealing or wrong doing, and that the matter was in the hands of her lawyers.

[12] Her position was that if no malice was involved in the making of the statement, she would have accepted an apology and she would not be in court. However, she had never received an apology from either of the Defendants. She felt that there had been some damage to her reputation. She felt angry at being involved with whatever problems PriceMart may have had, by being associated with stealing.

[13] **Under cross-examination**, Mrs. Knight-Bentham said while she

was of the opinion that Ms. Boyce could be vindictive and was capable of making the alleged statement, she was nevertheless shocked that the statement had in fact been made. She felt hurt that even after her lawyer’s letter to the Defendants, there had been no attempt to deny or qualify the statement made by Ms. Boyce.

Evidence in support of the Plaintiffs.

[14] Ms. Vickie Cox who gave evidence on behalf of the Plaintiffs

Belgrave and Knight-Bentham, said that she worked at

PriceMart from August 2001 to June 2003, first as a receiving

secretary and was a buyer in purchasing at the time she left. She said that she was aware that sometime in August 2002 the Plaintiffs and other persons had been terminated by the Company. She recalled that at the staff meeting on September 1st, 2002 Ms. Boyce speaking of the store’s performance and in-house management changes, also said that she felt bad coming into a new position and having to let go staff members for stealing. Ms. Cox stressed that no qualification was made as to which staff members had been dismissed for stealing. She took the statement to mean that everyone who “had been let go,” had been fired for stealing. Ms. Cox stated that she was at the front row to the side of the assembled workers and that Ms. Boyce who stood in front of them, did not use a microphone while speaking.

[15] Ms. Cox said she believed the statement included the Plaintiffs, and that when she called Knight-Bentham she told her that she did not know that she had been dismissed for stealing. While she had been partially joking, she wanted her to know that the view of others was that she had been terminated for stealing.

[16] **Under cross examination**, Ms. Cox said that the statement by Ms. Boyce about feeling bad about coming into a new position and having to let go members for stealing, was just said and not expanded upon. She further said that it had been made almost at the start of the meeting after she had introduced Joann Murray as the new Human Resources Manager as a replacement for Ms. Bentham and Donna Branch as Purchasing Manager. She (Ms.

Cox) had arrived for the meeting at 4.30 pm and stayed until 5.45 pm.; the meeting itself had started at about 5.00 pm. Ms. Cox agreed that Ms. Bentham was her friend and that she had called her after the meeting. She also mentioned the statement made at the meeting to Ms. Belgrave, with whom she had twice “lived” at the Boatyard during her employment. She reiterated that she took the statement to apply to those who were dismissed, which included managers and that nothing else was said at the meeting to explain the terminations.

[17] **Evidence of Mrs. Nadur-Haloute**

Mrs. Nadur-Haloute testified that she was the Accounting Manager at PriceMart. During the month of August 2002, a number of persons, including the Plaintiffs had been terminated and she had prepared their final cheques. She further said that she attended the meeting on 1st September, 2002 and that she stood at the front, facing the staff. Ms. Boyce said that she had assumed the position of warehouse manager and that she was sorry to take on this position and have to terminate the staff for stealing. It was her recollection that at the time the statement was made all persons terminated had not been terminated for stealing. She felt that the statement gave that impression and she was shocked to hear it. Mrs. Nadur-Haloute further said

“I am here today because I believe that it was damaging to persons’ character and it was untrue as it related to some of the persons terminated. I bear no ill-will to PriceMart; I called Vickie Bentham after the meeting and I told her she would not believe what was said today”.

Mrs. Nadur-Haloute further testified that Ms. Boyce did not specify the persons involved in stealing **or not** involved, when making the statement.

[18] **Under cross-examination,** Mrs. Nadur-Haloute agreed

that there had been a restructuring programme at the Company in 2002 which in her view had been done properly. She further said she had a working relationship with the Plaintiffs, and save for office courtesies, there was no off the job socializing. However, she had invited the Plaintiff Vickie Bentham to her wedding and she had called her from home and read the statement to her. She did not call the other plaintiffs as she did not have their telephone numbers. After Mrs. Nadur-Haloute’s evidence, the Plaintiffs closed their case and the first Defendant Maria Boyce gave her evidence.

The case for the Defendants

[19] Maria Boyce, the first Defendant said that she joined PriceMart on 3rd June 2001 as Purchasing Director and thereafter was Country Manager from 1st July 2002 to August 2003. The company had instituted a restructuring policy in December 2001 and continued after August 2003, because of operational costs and inefficiencies identified. She recalled that there was investigation in May and June 2002 into alleged stealing which had been conducted by a Lloyd Joseph the regional security manager based in Trinidad. She had called in Mr. Joseph as Arnold Phillips had not responded to statements that she had passed to him for investigation. As a result about five or six persons were discovered stealing.

The Meeting

- [20] Ms. Boyce said that she recalled the Sunday meeting of September 1st, 2002 the purpose of which was to speak about the past and future of PriceMart. She said that she spoke at the meeting and her remarks were consistent with the theme of the meeting. She said she spoke of the many persons who had called her at home and on the sales floor asking about their job security. Her speech also touched on the Company's review of its operating costs and the redundancy and restructuring programme. She agreed that she said that there was a cancer in the business and that cancer was the persons who had confessed to stealing and she hoped that it would not happen again. She said she made it clear that managers were not involved in stealing and that their terminations had nothing to do with stealing. She said that she then went on to speak about merchandising and Christmas and introduced the persons who were to act for her when she proceeded on maternity leave in October of that year. She reiterated that she clearly said that none of the managers were involved. She said her relationship with the Plaintiffs were purely professional and that she had no grudge or ill-will against any of them.
- [21] **Under cross-examination**, Ms. Boyce said that she did not think that Vickie Cox and Mrs. Nadur-Haloute had heard everything that she had said, and they are both mistaken as to a recollection of what she had said at the meeting. She said that they were persons other than managers who had not been involved in larceny who also lost their jobs because of restructuring. She denied that the statement that the managers were clearly exonerated, was an ex post rationalization or fabrication.

Under re-examination, Ms. Boyce said that she did not name

persons who had confessed because she did not wish to be punitive and the company did not have a policy of naming and shaming.

- [22] Sam Millington who gave evidence for the Defendants said that he had been a compliance manager at the Company and was now a business manager. He had attended the September 1st meeting and had stayed for the entirety of the meeting where the matters spoken about related to the restructuring of the company, terminations, merchandising and some concerns about job security. He said that Ms. Boyce was the only person who spoke at the meeting. He recalled that Ms. Boyce had mentioned that there was a cancer in the company and that it was something to be dealt with. To his recollection, the only reference to stealing was to line staff. He said further that he knew the Plaintiffs who were his colleagues and that there had been no mention of their names. He said further he had children and attended church and that he had been asked by the Human Resources Manager whether he was present at the meeting. He first met the Defendants' lawyers sometime in 2003 and again 2 weeks prior to the trial. He was of the opinion that Ms. Boyce was a fair person.

Mr. Millington was not cross-examined.

- [23] **Andrea Alleyne** was also a witness for the Defendants. In her evidence-in-chief, she said that she had been an employee of PriceMart for three and a half years, holding the position of Quality Controller in 2002. Her current position was a Front -end Manager.

- [24] Ms. Alleyne said that she recalled the meeting of September 1st, 2002 for which she was present throughout. The meeting had been about terminations, restructuring, losses incurred, merchandising and preparations for the upcoming Christmas period. She stated that Ms. Boyce who was the primary speaker at the meeting, had spoken of restructuring, with staff at all levels being cut. Ms. Boyce had then went on to speak about inventory and that self-confessed line staff had been terminated because of inventory loss. However, Ms. Boyce made it abundantly clear that people in management had not been laid off because of the loss of inventory, as had been rumored prior to the meeting.

- [25] Ms. Alleyne who said that she attended church and had just completed a management course at the marketing centre, said she was approached by the Human Resources Manager about the meeting, and it was suggested

that she see the lawyers for the Company. It was her belief that she would not have been penalized by the Company if she had failed to come.

[26] **Under cross-examination,** Ms. Alleyne said that while she had sat 2 tables away from where Ms. Boyce had spoken, she recalled that Ms. Nadur Haloute had been standing next to Ms. Boyce at the front of the meeting. She further said that while she could not recall everything that happened at the meeting, she was clear that Ms. Boyce said that she was sorry to terminate people due to restructuring and that managers had not been terminated for loss of inventory.

[27] Ms. Alleyne further said that in late December 2002 or early January 2003, she was asked about the incident by Ms. Jo-Ann Murphy, the Human Resources Manager, who had also been present at the meeting though she could not recall if Ms. Murphy had been present when the words were said. She said that she had told Ms. Murphy that to her recollection, no mention was made of managers being sent home for stealing. As a result of her recollection, she had been directed to Mr. Codrington, Counsel for the Company. She had not spoken to anyone else and did not speak to Mr. Millington until later. While Mr. Codrington had told her the precise words alleged to have been uttered by Ms. Boyce in the statement of claim, which she maintained had not been said by Ms. Boyce, it did not strike as curious that the managers were singled out for exoneration because it was felt that everybody was touched by the rumors.

[28] Finally, Ms. Alleyne said she was now a Manager at PriceMart, and that she had not been put under any pressure to come to court. She did not know either Ms. Cox or Ms. Nadur Haloute to be dishonest and that they would have to be mistaken to have attributed the words they had to Ms. Boyce. **Under re-examination,** Ms. Alleyne reiterated that she neither heard nor got the impression that managers had been fired for stealing.

[29] The final witness in the action and for the Defendants was Ms. Roberta Hoyte who had commenced employment with the Defendant company on August 15th, 2002 as a Data Processor, the position she still held. She too recalled the meeting of 1st September 2002 which she had attended for its entire duration. She described the meeting as being informative, regarding restructuring, changes in the company and termination of staff. Ms. Hoyte testified that the meeting was told by Ms. Boyce that while some of the terminations were related to restructuring, other employees had been terminated for stealing which she described as a cancer that had seeped into the company. Ms. Boyce however assured staff that their jobs were not at risk because the cancer had been dealt with. While Ms. Boyce did not name any of the persons who had been terminated, she said that it was specified that the cancer problem of stealing related to line staff. Ms. Hoyte said that she went to church on occasions, and that she had been asked by her manager, Jo-Ann Murphy if she had been at the meeting, remembered details of the meeting and had been present from the beginning to the end, to which she replied yes. It was her belief that she would not have been fired if she had declined to come to court to give evidence.

[30] **Under cross-examination,** Ms. Hoyte said she could not

remember at what stage of the meeting Ms. Boyce had said her words. Ms. Hoyte said that she was standing near the front and that she heard Ms. Boyce specifically identify line staff as having been dismissed for stealing. *"Line staff were not persons who are supervisors or managers"*.

Review of the evidence.

[31] The demeanour of witnesses is critical to a determination as to where the truth of a matter lies and this truism has equal application in libel proceedings. In my view, while both the female plaintiffs were forthright and candid, I was less impressed by the Plaintiff Phillips. Similarly, with respect to the witnesses for the Plaintiffs, Vickie Cox and Nadur Haloute, I am of the view their evidence was credible and given in a matter of fact manner. In contrast, Andrea Alleyne for the Defendants alternated in being defensive in giving her evidence particularly in her assertion that the remarks of Ms. Boyce were exclusionary of the Plaintiffs, and was aggressive under cross-examination while Roberta Hoyte presented as a very reluctant witness who did not think her involvement in the matter would have required her attendance at court. The Defendant Maria Boyce gave her evidence clearly and distinctly, but I was left with the strong impression that Ms. Boyce's evidence that she had specifically excluded

the managers from her remarks about stealing, to be self-serving.

- [32] It is noteworthy that none of the senior Managers of the Company, including Ms. Murphy, the Human Resource Manager who were present at the September 1st meeting, gave evidence on behalf of either of the Defendants.
- [33] On a consideration of the evidence of the parties and their witnesses, I am of the view that the evidence of Cox and Nadur for the Plaintiffs more credible than that of Alleyne and Hoyte for the Defendants.
- [34] Moreover, I do not accept that the Defendant Maria Boyce in her remarks specially excepted the managers from being part of her comments about stealing and her assertion to the contrary was made, in my judgment, as an ex-post facto rationalization in light of the law suit. However, I do not believe that she was motivated by malice, and that the remarks were carelessly made without regard to the possible interpretation which could be placed on them.

THE LAW

- [35] In all cases the test is whether a reasonable person might understand the defamatory statement as referring to the Plaintiff.

“It is an essential element of the cause of action for defamation that the words complained of should be published ‘*of the plaintiff*’. No writing is considered to be a libel unless it reflects on and casts an imputation on some particular person.”

per Bollers J in Ramsahoye v. Peter Taylor and Co. Ltd [1964] L.R.B.G. 329, Supreme Court, British Guiana.”

- [36] Where a disparaging statement is made of a class or group of persons, no individual of that class can sue unless the individual can show that he is a member of that class.
- [37] Pursuant to section 3(2) of the Defamation Act Cap. 199 of the Laws of Barbados:

“An action (for defamation) arises where a person publishes any matter by means of the whole or any part of which, the publisher makes an imputation defamatory of another person, whether by innuendo or otherwise.”

Section 2 defines ‘publication’ as

“publication by the Defendant or his servant or agent in any manner and whether or not in permanent form.”

- [38] In **Knuppfer v. London Express Newspaper Ltd [1944] 1 All ER 495 at p. 496** the test was stated thus:

“Where the plaintiff is not named, the test which describes whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to...”

[39] In the circumstances of my finding as to the credibility of the evidence given by Vickie Cox and Natasha Nadur who were among the persons to whom Ms. Boyce's words were published and who concluded that reference was being made to the Plaintiffs, the test in **Knuffer** has been satisfied.

[40] In **Sim v. Stretch [1936] 2 All ER 1237** Lord Atkin at p. 1240 stated that a defamatory statement was one which tends "**to lower a person in the estimation of right-thinking members of society generally.**"

[41] However, while the evidence of their witnesses fails to show that the Plaintiffs were lowered in their estimation – one of the tests as to whether the published words were in fact defamatory, the leading text on the subject, **Gatley on Libel and Slander [2004] 10th Edition** at 2.8 on page 37, notes that:

"There may even be defamation without injury to the claimant's reputation, in the ordinary sense of that word, for instance, words reflecting on the claimant's credit, in the financial sense, would be defamatory even in a society and a time when poverty is not regarded as a crime."

[42] *A fortiori*, an imputation of stealing will be defamatory and

entitles those defamed to be compensated. In the result, for the reasons hereinbefore stated, it is my judgment that each of the Plaintiffs is entitled to recover damages for the injury to their reputation.

[43] It was common ground among all the witnesses in this case that the staff of PriceMart were the only persons present at the September 1st meeting. The Barbadian cases **Scantlebury v. The Advocate Company Ltd** (No. 2017 of 1993) (unreported) and **Blackman and Ishmael v. Nation Publishing Co. Limited** (SC # 474 & 475 of 1990) were cited to provide guidance as to the

appropriate award in this case. In **Scantlebury** an award of \$40,000.00 was made in respect of an allegation of involvement in drug trafficking, while in **Blackman and Ishmael** the sum of \$25,000 and a further \$35,000 arising from repetition of the libel which imputed dishonourable and immoral conduct in their role as teachers, was awarded to each Plaintiff.

[44] As I have noted, the persons to whom the defamatory remarks were published was limited to the PriceMart employees. In that circumstance I do not consider that the amount of the awards in the cases of **Scantlebury** and **Blackman** and **Ishmael** be followed in this action. Moreover, I do not believe that Miss Boyce was motivated by malice in making the remarks attributed to her. In the circumstance, I award to each of the Plaintiffs the sum of \$10,000 against the First and Second Defendants, jointly and severally.

The Plaintiffs to have their costs, to be taxed or agreed.

Christopher Blackman

High Court Judge

