

BARBADOS.

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Jurisdiction

NO. 153 of 2005

BETWEEN:

ARTHUR G. RICHARDSON

Plaintiff

AND

T. CYNTHIA J. BARROW-GILES

Defendant

Before the Honourable Mr. Justice William J. Chandler, Judge of the High Court.

2010: March 22

April 22

May 19

2011: September 14

Mr. Chester Sue, Attorney-at-Law, for the Plaintiff

Mr. Steve A. H. Gollop, Attorney-at-Law for the Defendant

DECISION

Introduction

[1] This matter involves an application by summons filed on the 20th July 2007 for the assessment of damages by a judge in chambers pursuant to an order

of the Registrar of the Supreme Court dated the 17th day of July 2006. (the Registrar's order)

- [2] On the 17th July 2006 judgment in default of defence was entered by the plaintiff against the defendant in respect of a Writ endorsed with a Statement of Claim filed on the 28th January 2005 and served on the defendant on the 8th day of February 2005.
- [3] The matter has now come before the Court for the assessment of damages pursuant to the Registrar's order.

Background

- [4] The plaintiff is a professor at the University of the West Indies ("U.W.I") and the Director of the School of Education of that Institution. The defendant is a head of Department of the Cave Hill Campus of the U.W.I.
- [5] On or about the 9th day of November 2004 the defendant wrote and published or caused to be written and published a typewritten letter which contained the following words:

1. "To be sure, the Department of Government, Sociology, Social Work and Psychology regards the actions on the part of Professor Arthur Richardson of the School of Education in the last two years to deliberately undermine the long teaching tradition of the Department in the discipline of psychology as nothing short of malicious."

2. “From the inception however, Professor Arthur Richardson reneged on that gentleman’s agreement.”
3. “Further the Department is greatly concerned about the unilateral outrageous actions undertaken by Professor Richardson in areas that are demarcated as the province of the Department of Government, Sociology, Social Work and Psychology and as such the Faculty of Social Sciences.”
4. “We wish to underscore the point that Professor Richardson has over extended his reach and the Department of Government, Sociology, Social Work and Psychology has run out of patience with his unethical and questionable behaviour.”

[6] The other material facts are contained in the pleadings in the Statement of Claim, paragraphs 4, 5, 6 and 7 of which provide as follows:

- “4 The said letter was dictated by the Defendant to a typist, or for transcription by a typist, under the Defendant’s instructions whom the Plaintiff cannot identify and was signed by the Defendant.
5. The said letter was addressed and sent to Dr. Hazel Simmons McDonald, Dean of the Faculty of Humanities and Education and copied to the Dean of the Faculty of Social Sciences, Cave Hill Campus, the Principal of Cave Hill Campus, the Dean of the Faculty of Social Sciences, St. Augustine, the Dean of the Faculty of Social Sciences, Mona, the Head of the Department of Behavioural Sciences, St. Augustine, the Head of the Department of Sociology and Social Work, Mona, the Head of the Department of Economics, Cave Hill Campus, the Head of the Department of Management Studies, Cave Hill Campus and the Plaintiff as Director of the School of Education, Cave Hill Campus.

6. The said words were calculated to disparage the Plaintiff in his office of Director of the School of Education.
7. In consequence the Plaintiff's reputation has been seriously damaged, and he has suffered considerable distress and embarrassment.

[7] The plaintiff claimed damages, interest thereon and costs.

[8] In support of his application for the assessment of damages, the plaintiff filed an affidavit on the 20th July 2007 in which he deposed as follows:

1. I am the Plaintiff herein.
2. I am a Professor of Education Psychology at Cave Hill Campus of the University of the West Indies since 2002.
3. Prior to being appointed Professor I served as a Lecturer in Educational Administration at the Mona Campus from 1982 - 1983, a Lecturer in Educational Psychology and Teacher Education at the Cave Hill Campus from 1982 - 1994 and a Senior Lecturer at the Cave Hill Campus from 1994 - 2002.
4. During the period 1997 to 1998 I was a Visiting Professor at the City University of New York in the U.S.A.
5. During my tenure at the University of the West Indies, in addition to my academic appointments, I have held various administrative appointments from 1993 to the present including Director and Deputy Dean of the Faculty of Education at the Cave Hill Campus.
6. Since 1991 to the present I have served as consultant to various organizations including the United Nations

Development Programme Teacher Education, USAID, the World Bank and the Caribbean Development Bank.

7. Since 1989 to the present I have acted as Coordinator for various academic programmes at the Cave Hill Campus including the Secondary Non-Graduate Teacher Training.
8. From 2001 to the present I have acted on various committees and Boards within and outside of the University of the West Indies, including Chairman of the Scholarship Awards Review Committees of the Barbados' Ministry of Education and a member of the Board of Management of the Erdiston Teacher's Training College.
9. I am a member of several international societies and organizations, including the British Psychological Society and the American Psychological Association.
10. I am the recipient of a number of honorary scholarships and awards including a Long Service Award from the University of the West Indies for 20 years service.
11. I am the author of two books and many articles papers and reports which have been published in several international journals.
12. Upon invitation to various distinguished conferences and academic meetings I have presented many papers on education, teacher training and adolescence.
13. I am a Chartered Psychologist.
14. My academic duties at the Cave Hill Campus include teaching various courses in psychology and supervising students in their research projects for the Masters in Education, thesis for M.A. and M. Phil. and thesis for the Ph. D.

15. I have also been instrumental in developing and implementing various programmes in Education across the Eastern Caribbean.

16. A copy of my curriculum vitae is attached hereto as Exhibit "ARI".

[9] His curriculum vitae is voluminous and it is unnecessary to reproduce it in this judgment in full. Suffice it to say that he holds a Doctor of Philosophy Degree and a Bachelor in Education with distinction from the University of the West Indies; was a visiting professor at the University of New York, Professor of Educational Psychology; Deputy Dean of the Faculty of Education and a director. He has also been a consultant to the United Nations Development Programme, and is a member of several committees of the University of the West Indies, and of non-university committees.

[10] He has held membership of learned societies and professional organisations; has received "honorific" awards for scholarship and has published extensively in several journals and has co-authored several articles. He has attended several conferences and seminars within the region and internationally and has served on national, regional and international public and scholarly bodies. The plaintiff has taught at the undergraduate level and, at the post graduate level, has supervised students up to the doctoral level.

[11] No viva voce evidence was led and there was no cross-examination of either the plaintiff or the defendant. No evidence was led by any third party as to the import of the published statement or of their opinion of the plaintiff after reading the letter. No apology has ever been tendered or published by the defendant.

[12] No evidence has been led in support of the pleading that the plaintiff suffered distress or embarrassment.

Issue

[13] There is only one issue before the court namely: What is the measure of damages which the plaintiff ought to receive for the injury to his reputation.

[14] In considering the quantum of damages it is important to ascertain what do the defamatory words mean.

The law

[15] A defamatory statement is one which lowers a person in the estimation of right-thinking members of society or which holds him up to public ridicule, odium or contempt. The essence of the tort is the harm done to the plaintiff's reputation.

The import of the words

- [16] The defamatory words have already been reproduced in this decision.
- [17] The plaintiff's counsel in his skeleton arguments did not venture an opinion on what the words meant or were understood to mean. He contented himself with the submission that the words were deliberately written and calculated to, and did, cause serious damage to the plaintiff's reputation and caused him to suffer feelings of embarrassment and distress in the presence of his peers and colleagues.
- [18] The defendant's counsel, in his response to the plaintiff's skeleton arguments, opined that "the words complained of criticized the plaintiff in his capacity as Director of the School of Education and alleged that he deliberately undermined the "teaching tradition" of the Department of Government and Sociology at the University of the West Indies, Cave Hill, by reneging on an agreement. This behaviour was further described as "unethical and questionable".
- [19] There is a certain duality in the approach of counsel for the defendant in the quotation cited. On the one hand, he opines that the words criticized the plaintiff in his capacity as Director of the School of Education, and on the other hand, he goes on to describe the words as an allegation that the plaintiff deliberately undermined the "teaching tradition" of the

Department of Government and Sociology of the U.W.I. Be that as it may, there was no attempt to justify the use of the words by way of a plea of comment and there was no plea of justification of the allegation as counsel characterized it. It is for the Court in this decision to conclude what did the words used mean?

- [20] The import of these words must be seen in the light of the plaintiff's role as head of Department at the U.W.I. The first sub-paragraph of paragraph 3 of the statement of claim specifically refers to the deliberate undermining of the long teaching tradition of the department **in the discipline of psychology** (emphasis mine) as nothing short of malicious.
- [21] These words can only mean that the plaintiff not only deliberately but with a malicious or undesirable motive undermined the teaching tradition in an area for which he bears responsibility as head of department.
- [22] With respect to sub-paragraph 2 of the said paragraph 3 these words imply that the plaintiff is not to be trusted to keep his word since he reneged on a gentleman's agreement.
- [23] With respect to sub-paragraph 3 of the said paragraph, these words can only mean that the plaintiff by unilateral action characterised as outrageous, overreached himself into the designated areas which are the province of another department. This implies that he was ignorant of his

responsibilities or deliberately concerned himself in areas not assigned to him or his department in a manner described as outrageous and unilateral.

[24] The words outlined in sub-paragraph 4 of para. 4 of the Statement of Claim reiterate that the plaintiff overreached his area and that, by his actions, the Department of Government had run out of patience with his conduct, which was described as “unethical and questionable”.

[25] The latter words most forcefully demonstrate the suggestion that the plaintiff is a man without ethics and whose conduct is questionable, meaning he is not to be trusted. The clear imputation from all of these allegations is that he is unfit to hold the office of head of this department. In the context of the plaintiff’s qualifications, his high standing in the university and in the academic community as his curriculum vitae suggests, this is a most grave attack upon his character and reputation, professionally and otherwise. The words used would clearly lower him in the estimation of right thinking members of the society.

The Submissions

[26] The plaintiff’s counsel, Mr. Chester Sue submitted that the words complained of were calculated to cause the plaintiff irreparable damage to his professional reputation. He submitted that the target audience of the letter had to be considered. The words were dictated to ancillary staff and

copied to Deans and heads of department of the mentioned faculties of the U.W.I. and the Principal of the Cave Hill Campus.

[27] These words, he urges, were deliberately written and calculated to, and did cause, serious damage to the plaintiff's professional reputation and he was occasioned feeling of embarrassment and distress in the presence of his peers and colleagues. There was no apology even though the defendant had ample time to apologize. He urged further that the defendant's letter was calculated to hamper the plaintiff's chances of holding office at any of the three campuses of the U.W.I. Counsel did not elaborate on how it was so calculated. There is, however, no evidence that the letter had this effect.

[28] Counsel submitted that an award of \$80,000.00 was justifiable. He relied on the following cases:

Craig v Miller No. 317 of 1986, Ashby v Bailey 1973 21 WIR 20, Greaves v Greenidge No. 1139 of 1989, Sir Denys Ambrose Williams v Robert Best and The Advocate Co. Ltd. 1914 of 1992, Greenidge v The Advocate Co. Ltd. No. 1145 of 1993(Greenidge) and Blackman v Nation Publishing Co. Ltd., No. 474 of 1990 (Blackman).

[29] Counsel relied heavily upon the dictum of **Sir Denys Williams, CJ. (Sir Denys)** In **Craig v Miller** where he said:

“There was really nothing to mitigate, many things to aggravate damages. There was no plea of justification and yet

no apology ... The defendant from the beginning showed that he was not sorry ... In my view this was a deliberate attack on the plaintiff's reputation calculated to affect his chances at the election. A plaintiff is likely to feel greater injury if an assault on his reputation is deliberate and not accidental or repugnant. Just as he is likely to feel more grief if he knows that the defendant is not sorry but is in fact unrepentant ... I think it is fair to take into account the conduct of the defendant before the action, after the action and in Court during the trial."

[30] This quote is not a continuous quotation from the judgment, it is a disjunctive quote where **Sir Denys** was considering the following issues namely: the effect on the plaintiff's reputation of the words, the defence of drunkenness at a public meeting and the conduct of the defendant who, when called upon by the plaintiff to explain his conduct at the public meeting stated that he did not give "a fuck".

Defendant's submissions

[31] Mr. Steve A. H. Gollop, the defendant's counsel submitted that the sum of \$7,500.00 would be adequate compensation for damages to compensate the plaintiff. He stated that this was based on the fact that the defendant did not tender an apology or file a defence. His further submission that the words may "... amount to fair comment" were withdrawn after the Court enquired whether counsel was opposing the claim and was seeking to contest the issue and he said he was not.

- [32] Counsel analysed a number of cases. He submitted that in *Craig v Miller No. 317 of 1986 (Craig v Miller)*, *Greaves v Greenidge No. 1137 of 1989* and *Ashby v Bailey 21 WIR 20*, the defamatory statements accused the plaintiffs of involvement in serious criminal activity and corruption in public office respectively.
- [33] He distinguished *Craig v Miller* as a matter in which the allegation was of granting homosexual favours to secure high office and the luring of young women to locations for the filming of them performing unnatural acts. He further submitted that in *Greenidge* and *Blackman* the plaintiffs were alleged to have been involved in acts of serious indecency. In *Craig v Miller* the award was \$50,000.00, In *Greaves v Greenidge*, \$27,500.00. In *Greenidge's* case an award of 25,000.00 was made, in *Blackman's* case \$60,000.00 and in *Ashby's* case the award was \$27,500.
- [34] In *Williams v The Advocate*, a former Chief Justice of Barbados was awarded \$60,000.00 for a defamatory statement which imputed to him bias in the discharge of his judicial functions.
- [35] The further distinguishing features highlighted by counsel related to the fact that in these cases, the method of publication was either by way of political meetings or via news paper where the captive audiences were large. The small radius of persons to whom the publication in the instant

case was made was an important factor in deciding the quantum of damages. He also submitted that the matters discussed in the letter of the defendant were restricted to University policy and did not hold the plaintiff's professional competence into question. Thus, an award lesser than any awarded in the cited cases, ought to be made by this Court.

Discussion

[36] I have already said that I consider the words to have been a grave attack on the plaintiff in his professional as well as private capacities.

[37] It is impossible to differentiate between an allegation of unethical behaviour which does not involve the basic character and dignity of the human person who wears the guise of the professional. In this case, the characterisation is made even more profound when the defendant accused the plaintiff of reneging on a gentleman's agreement. The plaintiff is a professional teacher in the discipline of psychology within the University of the West Indies. The defamatory words speak to the Department of Government, Sociology, Social Work and Psychology as regarding the plaintiff's actions to "... deliberately undermine the long tradition of the Department in the discipline of psychology as nothing short of malicious." I, therefore, cannot accept the defendant's submission that the defamatory

matter and its effect is to be circumscribed as relating to University policy and did not hold his professional competence into question.

[38] In this regard, I take into account that the statements were published to a limited number of persons namely: The Dean of the faculty of Humanities and Education; the Dean of the faculty of Social Sciences; the Principal of the Cave Hill Campus; the Dean of the faculty of Social Sciences, Mona Campus; the head of the Department of Behavioural Sciences, St. Augustine Campus; the head of the Department of Sociology and Social Work, Mona Campus; the head of the Department of Economics, Cave Hill Campus; the head of the Department of Management Studies, Cave Hill Campus.

[39] These persons represent a fairly wide cross-section of the academics who make up the faculty of the university of the West Indies. The publication of the defamatory material was also cross-border and it was disseminated to Jamaica, the Republic of Trinidad and Tobago and Barbados. No evidence has been led as to the extent to which the plaintiff has been lowered in the estimation of right thinking members of either the academic or non-academic community, but this is no bar to his recovery of substantial damages.

[40] The extent of this defamation cannot be insubstantial as counsel for the defendant has submitted and I hold that only a substantial award of damages would be appropriate.

Damages

[41] It is unnecessary to go through the cited cases again since their facts are well known. Every case stands on its own peculiar facts and decided cases are a mere guide to the courts in terms of exercising its own discretion on the peculiar facts of the case before it.

[42] There are, however, a number of factors which impact on the quantum of damages to be awarded. These are: the scope of the publication which is to the faculty of the University as I have already stated; the injury to the reputation of a man of letters and high standing in the academic community; the obvious hurt to his feeling which such defamatory matter would engender and consequent embarrassment.

Quantification of damages

[43] In *Williams v The Advocate*, an award of \$60,000.00 was made to the then sitting chief justice of impeccable character of whom bias was alleged. No evidence was led as to the extent to which his reputation was lowered in the estimation of right thinking members. The defamatory statement was carried in a newspaper of wide circulation. Whilst the defamation here is

grave, I do not think that an award of this magnitude is merited given the limited class of persons to whom this letter was published. I, likewise, am of the opinion that the award in *Craig v Miller* is not applicable to this case since the imputations were of moral indecency and unfitness to hold public office communicated by the spoken word at a political meeting attended by hundreds if not thousands of people. *Sandiford's* case involved allegations of moral unfitness and criminal conduct against a teacher which was widely circulated and disseminated in the public media.

- [44] In most of the quoted cases, imputations of criminal conduct were made. In **Miller's** case, it was homosexuality, murder and engaging in the illicit drug trade. The imputations were far more serious than in the instant case.
- [45] On the other hand, I consider that the defendant had ample opportunity to mitigate the damage suffered by tendering an apology or making an offer of amends pursuant to section 16 of the **Defamation Act, Chapter 199** of the Laws of Barbados (the Act). It must be noted that no defence was filed in this matter and, therefore, that avenue was always open to the defendant. This would have allowed the defendant to rely on such an offer in mitigation of damages under section 18(3) of the Act.

Disposal

[46] In all the circumstances of this case, I am of the view, and I hold, that an award of damages in the sum of \$30,000.00 will suffice.

[47] The Court therefore orders that:

1. The defendant pay damages of \$30,000.00 to the plaintiff.
2. The damages are to bear interest at the rate of six per cent per annum (6%) from the date of judgment until payment.
3. The defendant do pay the plaintiff's costs of this action to be taxed if not agreed.

William J. Chandler
Judge of the High Court.