

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 1940 of 2013

BETWEEN

ANTHONY PATRICK REECE

CLAIMANT

AND

DR. BRONWEN GLASFORD

DEFENDANT

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

2016: August 22

2017: May 26

Ms. Lani Daisley in association with Marilyn Moore of Moore Daisley, attorneys-at-law for the Claimant

Dr. Brown Glasford in person and unrepresented

DECISION

Introduction

[1] By claim filed on November 6, 2013, the Claimant, Mr. Anthony Patrick Reece, an attorney-at-law claimed damages in defamation against the Defendant, Dr. Bronwen Glasford, for a letter written by her and sent to his office. The Claimant claims the following relief namely:

1. Damages for defamation contained in a letter dated the 18th day of December, 2012 from the Defendant to the Claimant;
2. An injunction to restrain the Defendant by herself, her servants and/or agents or otherwise howsoever from further publishing or causing to be published the same or similar defamatory statements and/or comments of or concerning the Claimant;
3. Costs including budgeted costs, pursuant to Part 65;
4. Such further and other relief as this Honourable court deems fit.

Background

- [2] The Claimant was retained by Kim Thompson and Cheryl Thompson, the beneficiaries and/or administratrices (the Claimant's clients) of the estate of Clarence Festus Thompson (the deceased).
- [3] The Defendant is and was at all material times, a tenant of the property situate at "Ragged Point Hotel", which was let to her by the deceased by way of an oral agreement.
- [4] In the course of his duties, the Claimant sent a letter to the Defendant dated 7th November, 2011 requesting inter alia, payment of legal fees in the amount of \$12,000.00 Barbados currency for work done on behalf of his clients.
- [5] The Defendant, in response to the Claimant's letter, sent a letter dated 18th December, 2012 to the Claimant in the following terms:

“Dear Sir,

I refer to your letter dated 7th November, 2012 conferring the status of ‘proposed Administratrix’ upon Kim Thompson. You will recall my reply of 21st October 2011 stated as follows:

In regard to legal fees, the scale of Fees of the Legal Profession Act to which you have referred is between yourself and your client. In any event, this demand of \$12,000.00 for your writing of a mere letter to me is asinine. I therefore repeat my reply dated 12th October, 2011. Otherwise this demand of \$80,000.00 payable to a so-called “qualified Administratrix” with \$12,000.00 in legal fees looks very much like chicanery”.

- [6] The Claimant in his statement of claim alleges that the words mentioned in the Defendant’s letter in their natural and ordinary meaning meant or were understood to mean that in putting forward the claim on behalf of his clients and the qualified Administratrix and in demanding the payment of \$12,000.00 purported to mean something which was deceptive or designed to trick people and/or was sharp practice.
- [7] The Claimant further contends that alternatively, the words bore or were understood to mean by way of innuendo that the Claimant engaged in sharp practices with the intention of deceiving and/or tricking the Defendant. Additionally that the words meant that the demand of arrears of rent in the amount of \$80,000.00 payable to the Claimant’s clients with \$12,000.00 in legal fees was conduct amounting to deception and/or trickery on the part of the Claimant,

- that the demand of the indemnification of legal fees expended by the Claimant's clients, to be paid by the Defendant was conduct amounting to deception and/or trickery.
- [8] On November 27, 2013, the Defendant filed an acknowledgment of service out of time indicating an intention to defend the claim. Further, the date for filing a defence was December 9, 2013. This passed and the Defendant was yet to file a defence. The Claimant however, did not attempt to obtain a default judgment since the parties were still in discussion.
- [9] On January 30, 2014 the Defendant who is representing herself filed a request for further information pursuant to Rule 34 of the Supreme Court of Judicature Act, Cap 117 Civil Procedure Rules 2008 (CPR).
- [10] The Claimant on February 19, 2014 then served the Defendant with a notice to remedy her default since the Defendant had failed to file a defence as prescribed by Part 12 of the CPR.
- [11] The Claimant on February 20, 2014, filed a response to the Defendant's request for further information.
- [12] Approximately 134 days after the filing of the claim form and statement of claim, on March 5, 2014, the Claimant filed a request for Default Judgment together with an affidavit in response.

- [13] On April 14, 2014, judgment was entered against the Defendant in default of failure to enter a defence whereby the Defendant was ordered to pay to the Claimant an amount to be assessed by the court.
- [14] On June 12, 2014, the Defendant applied to have the judgment entered against her set aside.
- [15] The application was heard on July 2, 2015 before the **Honourable Madam Justice Cornelius** who dismissed the application and ordered the parties to proceed to the assessment of damages pursuant to the Claimant's substantive application.

Issue

- [16] The sole issue for determination concentrates entirely upon the award of damages and can be stated as follows –

What is the measure of damages the Claimant should receive for the injury to his reputation caused by the defamatory statements published by the Defendant?

- [17] Counsel for the Claimant contends that general damages should be awarded to the Claimant since his reputation was tarnished because of the defamatory language imputed to him by the Defendant.
- [18] It is the Defendant's contention however that damages should not be awarded to the Claimant on the premise that the envelope in question was marked '*private and confidential*' and therefore was only meant to be seen by the Claimant to whom it was addressed – in other words

it was “for his eyes only”. She therefore should not be held responsible for the letter coming to the attention of other persons working in his office.

- [19] Interesting though this argument might be, it is irrelevant at this stage since default judgment has already been entered against the Defendant and the only issue which has to be addressed at this stage is how are damages to be assessed in these circumstances.

The Law

- [20] The established law is that compensation is the normal basis for defamation. **Section 23** of the Defamation Act, Cap 199 of the Laws of Barbados provides that:

“Damages recoverable in actions for defamation shall be by way of compensation and may include exemplary damages where the court considers that such an award is appropriate in the circumstances.”

- [21] Raymond E. Brown in ‘The Law of Defamation in Canada’ Second Edition, Volume 3 at paragraph 25.3 defined compensatory damages in the following way:

“Compensatory damages indemnify the plaintiff for any injury or damage in so far as an award of money is capable of doing so. They serve not only as consolation to the plaintiff for the wrong done, but also as a vindication of his or her reputation in the eyes of the public. The amount awarded should not encourage plaintiffs to see them as a road to riches. They should be precisely commensurate with injury, and return the plaintiffs to the position they would have been in had the

defamation not occurred. There must be some rational and appropriate relationship between the harm suffered by the plaintiff and the amount of damages awarded. Nevertheless, where a person's reputation has been attacked and is the cause of mental distress, it is recognized that there may be a wide gap between what may be regarded as a reasonable sum to which the plaintiff may be entitled as compensation."

[22] It can therefore be said that damages for defamation serves three purposes: (1) to act as a consolation to the Claimant for the distress he suffered from the publication, (2) to repair harm to his reputation and (3) as a vindication of his reputation (Gately on Libel and Slander, Eleventh Edition, paragraph 7.2 at page 265 – 266).

[23] In Garret v Worrell BB 2011 HC 23 at paragraph 53, **Chandler J** put it this way:

"The essential aim of an award of damages in a defamation action is to compensate the plaintiff for injury to his reputation. This would include the natural injury to his feelings, the natural grief and distress which he may have felt at having been spoken of in defamatory terms, and possibly injury to the plaintiff's pride and self-confidence."

[24] It is the duty of the court to consider the entirety of the circumstances in which the defamatory statements occurred. In Cleese v Clark and Another [2003] All E.R. (D) 63, **Eady J** stated at paragraph 38:

"It is necessary always to take into account the full circumstances of the case. Such factors have to be borne in mind as the gravity of the allegations, the scale of publication, the extent to which any readers believe the words to be true, any impact upon the claimant's

feelings, reputation or career. There may be matters of aggravation or mitigation which also need to be put in the scales...A fundamental point always to be remembered is that the purpose of such damages, and indeed compensation award under s.3(5), is compensatory and not punitive. It is also well settled that financial compensation (unlike any penalty) is to be awarded without regard to the parties' means."

[25] On the facts of this case, it is the opinion of the court that the major element in assessing compensation has to be the impact on the Claimant's feelings. It has to be noted that the publication was only to a few persons in his office and none of the witnesses who gave evidence thought less likely of the Plaintiff as a result of the contents of the letter.

[26] The Claimant is a senior attorney-at-law with over forty years standing and a good reputation. I think it would be reasonable to assume that the Claimant would have been deeply upset by this unpleasant letter and I do think that it is fair to say that his hurt feelings are genuine. The fact that the Defendant has offered no apology is also of some concern to him.

[27] It is the opinion of the court however that as defamation cases go however, the defamatory statements in this case are at the lower end of gravity.

Disposal

- [28] Having taken into account all of the factors stated above, the evidence, the law and the submissions of both parties, in my judgment an award of **\$10,000.00** is reasonable and sufficient as compensatory damages; together with interest at the rate of 8% per annum from today's date.
- [29] There is no evidence before me of any circumstances indicating a likelihood that the defamatory statements will be republished by the Defendant and therefore I will not grant the injunctive relief claimed by the Claimant.
- [30] The Claimant is also entitled to costs to be agreed or assessed.

PAMELA A. BECKLES
Judge of the High Court