IN THE SUPREME COURT OF BELIZE A.D. 2014
(CIVIL)

CLAIM NO. 484 OF 2014

BETWEEN

(SHARON ANDERSON **CLAIMANT**

AND

(THE CHIEF EXECUTIVE OFFICER,
(MINISTRY OF HEALTH
(ARIK LIMA
(DANA SMITH
(THE ATTORNEY-GENERAL **DEFENDANTS**

Before: **The Honourable Madame Justice Griffith**
Dates of Hearing: **21/06/2016; 11/10/16 & 21/10/16 (on written submissions); 24/10/16 (oral decision).**
Appearances: **Mr. Herbert Panton for the Claimant and Mr. Nigel Hawke, Deputy Solicitor-General for the Defendants.**

DECISION

Introduction

1. The Claimant Sharon Anderson is the Chief Pharmacist for the Ministry of Health, Government of Belize, employed as such for 17 years and in the public service for over 30 years. The Claimant brought a claim for defamation against the Defendants – the Chief Executive Officer of the Ministry of Health (MOH); the Procurement Manager for the Ministry of Health; Finance Officer in the Ministry of Finance (MOF) and the Attorney-General. The claim arose out of the publication by e-mail, of several statements made in respect of the claimant by the 1st – 3rd Defendants, in their capacities as members of a committee titled the Pharmaceutical and Medical Supplies Committee (informally known as 'the Tender Committee'). The statements were then forwarded, also via email to persons outside the committee and ultimately ended up in the press to members of the public.

The Defendants claim that the emails of the tender committee were protected by qualified privilege and additionally, were circulated into the public domain by a person other than the defendants, so that they were not liable for defamation of the Claimant.

Issues

2. The following issues arise for determination:-

   (i) Were the words complained of capable of bearing a defamatory meaning?

   (ii) If so, is the defence of qualified privilege available to the Defendants?

   (iii) If not, what if any damages are payable to the Claimant?

Background

3. The Ministry of Health of the Government of Belize, has as one of its responsibilities, the procurement and supply of pharmaceutical supplies for sale to the public. Incidental to this purpose, there is a committee comprised of civil servants and members of the medical profession and private sector. This Committee has as its main function (as stated by the CEO MOH), 'to manage and oversee matters pertaining to the procurement of pharmaceutical and other medical supplies.' Inter alia, the Committee reviews bids and makes recommendations for the award of contracts for the purchase of pharmaceutical supplies, presumably through the Ministry of Heath for consumption by the public. The 1st to 3rd Defendants are members of that Committee, which is chaired by Dr. Peter Allen, as CEO of the Ministry. As Chief Pharmacist for the Ministry, the Claimant's duties included signing customs entries for suppliers of pharmaceutical products.

4. On 11th April, 2014, the 2nd Defendant Mr. Lima says he received calls from suppliers who complained that the Claimant was not available to sign their customs entries, thus there were delays in them being able to clear their pharmaceuticals for supply to the public.

According to Mr. Lima he firstly attempted to locate the Claimant but after he was unsuccessful in ascertaining her whereabouts, he thereafter sent out an urgent email to members of the Tender Committee in order to obtain a solution to the problem her absence created. The email sent out by Mr. Lima received two responses, one from Ms. Dana Smith, Finance Officer, MOF and the CEO, MOH, Dr. Peter Allen. The train of emails of these three Defendants which were initially shared amongst the members of the Tender Committee (eight persons) on the 11th April, 2014 is as follows:-

(i) From Mr. Lima
"*Subject: Matter of Urgent Concern*
Dear all
It is my understanding that Mrs. Sharon Anderson is on strike and refusing to sign supplies – this could seriously endanger the health of our patients! What can we do to make sure our patients get their essential medicines?
Regards
Arik Lima…"

(ii) From Ms. Dana Smith

"Ms. Elamin used to sign Customs Entries. I would suggest that a person from CMS and/or Ms. Enriquez be given authority to sign. You can't have one person manipulating the system."

(iii) From CEO Heath, Dr. Allen

"I agree with Dana – one person cannot hold the system to ransom – I agree with Ms. Enriquez and probably Ms. Gongora and would also suggest Mr. Matus…ans (sic) Ms. Contreras."

5. On the 17th April, 2014 the train of emails was forwarded by an additional member of the Tender Committee (who was not a party to the claim) to several public bodies including the National Trades Union Congress of Belize and the Pharmacy Association. The emails made their way into the public domain via radio, television and newspapers. As it turned out, the Claimant was actually on sick leave from the 7th April, 2014 to the 11th April, 2014, inclusive and from the 14th April, 2014 to the 17th April, 2014.

On 25th May, 2014 a press conference was held at which the 1st and 2nd Defendants participated and the emails were once again discussed in the public domain. The Claimant alleged that the emails were defamatory as they suggested that she was '*unprofessional, insubordinate, negligent, undermining the system*' [of public healthcare] and '*worst of all endangering the lives of patients'*. The Defendants allege that the emails were made with the expectation of confidentiality as amongst members of the Tender Board; that they were circulated into the public domain by another member of the Tender Board without their knowledge or concurrence and that the statements made were to be protected by the defence of qualified privilege.

The Court's Consideration

Issue (i) – Defamatory meaning and publication of the emails.

6. *"Defamation is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the claimant."*[1] That being said, it is important to grasp that the gravamen of the tort is harm caused to a persons' reputation. As correctly stated by Counsel for the Claimant, there are three elements which must be proven in order for the tort of defamation to be established. These are:-

   (i) The statement must be defamatory;

   (ii) The statement must refer to the Claimant;

   (iii) The statement must be published, i.e. - communicated to at least one other person than the Claimant.

   The law pertaining to the first question of whether the words complained of are capable of bearing a defamatory meaning, is generally reduced to three well known formulae.

[1] Gatley on Libel & Slander 11th Ed. para 1.6

These are statements which (i) tend to lower a person in the estimation of right thinking members of society generally; or (ii) tend to cause others to shun or avoid the claimant; or (iii) expose the claimant to hatred, contempt or ridicule.[2] There is also a defamatory meaning to be found where words can cause injury to a persons' trade, profession or office.

7. In the instant case, the Defendants have not disputed that the words are capable of bearing a defamatory meaning, however, it is considered that the Court must nonetheless make a positive finding as it is a required element of the tort. Gatley on Libel & Slander recognises[3] that whether words are defamatory is a question of fact and must be considered according to the time, place and particular circumstances at hand. Additionally, that defamatory words are often in slang, and consideration has to be given to whether or not the words are clear in their ordinary and natural meaning, or whether it is desirable or necessary to explain them.[4] With respect to the instant case, which concerns three emails from three different authors, the content of each email must be found to be defamatory. However given the circumstance in which they were authored (in response to an initial statement amongst the same audience), it is considered that each email can derive its defamatory meaning from the context of all three emails as a whole.

8. In particular, the first email -

> *"It is my understanding that Mrs. Sharon Anderson is on strike and refusing to sign supplies – this could seriously endanger the health of our patients! What can we do to make sure our patients get their essential medicines?"*

The ordinary and reasonable person would not take these words to mean literally that the Claimant was in fact on strike (as per industrial action) thus it is desirable that the words be explained. To this end, the meaning conveyed is that the Claimant was for some reason wilfully refusing to do her job, thereby impacting the supply of medicines to the detriment of the health of members of the public.

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[2] Gatley on Libel & Slander supra. Para 1.8.
[3] Ibid. para 2.18.
[4] Ibid.

Contrary to what was suggested by counsel for the Claimant, it is not thought that these words would tend to expose the Claimant to hatred or ridicule or cause her to be shunned. However, given that the statement relates to the discharge by the Claimant of a public duty, in her capacity as a public officer, it is considered that the appropriate formula to be applied in attributing a defamatory meaning to these words, is whether they would tend to lower the Claimant in the esteem of right thinking members of society generally.

9. By way of ancient example, In **Foulger v Newcomb**[5] a gamekeeper responsible for the protection of foxes in a particular area was accused of poisoning the foxes. As the accusation related to his trade as a gamekeeper, the words complained therein were found to be defamatory. In the instant case, it is considered that by measure of any right thinking member of society, a wilful refusal to carry out one's duty both as a medical professional and public officer, which has the effect of placing people's heath at risk - is certainly bound to cause a lowering of the Claimant in the esteem of such members of society. It is agreed therefore that this email is capable of bearing a defamatory meaning. This entire email is found to be defamatory.

10. With respect to the second email (the words complained of underlined) –

> *"Ms. Elamin used to sign Customs Entries. I would suggest that a person from CMS and/or Ms. Enriquez be given authority to sign. <u>You can't have one person manipulating the system</u>."*

This response to Mr. Lima's email is clearly referring to the claimant in the last sentence and the words of that last sentence *('you can't have one person manipulating the system*') need no further interpretation. Again, a person employed to carry out certain duties would easily be deemed by her peers and right thinking members of society to be unprofessional or negligent in the conduct of his or her employment. These words, within the context of the first email are also found capable of having a defamatory meaning.

[5] (1867) L.R. 2 Ex. 327.

11. The final email (words complained of are underlined) –

> *I agree with Dana – <u>one person cannot hold the system to ransom</u> – I agree with Ms. Enriquez and probably Ms. Gongora and would also suggest Mr. Matus…ans (sic) Ms. Contreras."*

The words '*one person cannot hold the system to ransom*' are to be interpreted in the same light as those in the first two emails and are found capable of bringing the Claimant into disrepute amongst her peers and lowering her in the esteem of right thinking members of society. Taken into context together therefore, all of the emails are capable of bearing a defamatory meaning. It is also found without difficulty, which was not denied in any event – that the emails referred to the Claimant and that they were published, having been sent out to the eight members of the Tender Committee. Two points arise for brief mention with respect to publication within the Tender Committee.

12. In **Riddick v Thames Board Mills** [6]it was made clear that the internal memorandum of a company sent by one officer to another officer containing material defamatory of an employee was published even though not seen by any other person within or outside the company. In this case therefore is immaterial that the communication was intended only for the members of the Tender Committee. Additionally, the point was made by the Defendants that it was not the authors of the emails but another member of the Committee, who unbeknownst and not authorised by them, disseminated the emails to persons outside the Committee. *Gatley on Libel and Slander*[7] states that where a defamatory statement of a defendant is published by some other person the claimant has a choice, whether to sue the defendant for both the original publication and the republication as two separate causes of action, or sue the defendant for the original publication but seek consequential damages for the repetition. The claim in this case that publication outside of the Committee was not effected by the defendants as authors of the emails is therefore immaterial.

[6] [1977] Q.B. 881 @ 893
[7] Supra @ para 6.36

Issue (ii) – Are the Defendants protected by Qualified Privilege

The Submissions

13. The Defendants have pleaded qualified privilege in the publication of the defamatory statements. The defence is pleaded by reason of the nature and function of the Tender Committee, and that the Defendants were under a reciprocal moral and social duty to make (and receive) the statements regarding the Claimant's absence from work and failure to carry out duties essential to public health services. The Defendants contended that unless they were proven to have been actuated by malice in making the communications, the defence of qualified privilege should succeed. In particular, the Defendants assert that the occasion of communication within the members of the Tender Committee was not used for any improper purpose and that further to the explanation of the principles in **Horrocks v Lowe**[8], the Defendants held an honest belief in the truth of the statements made.

14. Much like the Defendants did not seek to deny the defamatory nature of the emails, the Claimant did not seek to deny that the communication amongst members of the Tender Committee attracted qualified privilege.

    The question however, was said to be whether the statements were actuated by malice so as to destroy the protection of the privilege. With respect to the question of malice, similarly from the case of **Horrocks**, it was contended on behalf of the Claimant that of the five instances enumerated as indicia of malice, three of those instances were applicable to the Defendants' communications, thus establishing malice. These indicia were as follows:-

    (i) The violence of the language used;
    (ii) The defendant publishes what he knows to be untrue; and
    (iii) The defendant believes what he says to be true, but does not use the occasion for the purpose for which the privilege exists, but for an independent and improper purpose.

[8] (1975) AC 150

15. With respect to the first instance of malice, it was submitted on behalf of the Claimant that in the clear absence of industrial action giving rise to a legitimate strike on the part of the Claimant, for the Defendants to have stated that the Claimant as a senior public officer was on strike and holding the system to ransom was to have used violent language. Further, given that the 1st Defendant (the CEO) made his statement when he was not present in the country and had no knowledge of whether the Claimant was at work or not, this absence contributed towards the violence of his language that the Claimant was holding the system to ransom. With respect to the question of whether the Defendants had an honest belief in the truth of their statements, it was submitted that there was no factual basis on the evidence from which it could be found that the Defendants were entitled to utter their statements. Additionally, it was submitted that the occasion of communication amongst the Tender Committee was misused, as the words uttered of the Claimant had nothing to do with its mandate of procuring pharmaceuticals.

Analysis by Court

16. The law relating to qualified privilege has been comprehensively stated by respective counsel for both parties without any real variance except for the application to their respective cases as urged upon the court. With appropriate thanks and recognition to both counsel, the Court where convenient, extracts relevant principles on the law from their submissions and the authorities which were provided to the Court. The first principle relevantly stated is that which speaks to the rationale of the defence, and this is so stated, as understanding the rationale of the defence ought to allow for greater clarity in its application to the circumstances of the instant case. In this regard, the following passages from early authorities, are extracted from *Gatley on Libel and Slander*[9]. The first is taken from **Huntley v Ward**[10]:-

> *"In such cases no matter how harsh, hasty, untrue or libelous the publication would be but for the circumstances, the law declares it privileged because the amount of public inconvenience from the restriction of freedom of speech or writing would far out-balance that arising from the infliction of a private injury."*

[9] Supra @ para 14.4.
[10] (1859) 6 C.B. (N.S.) 514 (Gatley supra pg

Additionally, the following is from **Henwood v Harrison**[11] as thereafter approved in **Adam v Ward**[12]

> *"The principle on which these cases are founded is a universal one, that the public convenience is to be preferred to private interests and that communictions which the interests of society require to be unfettered may freely be made by persons acting honestly without actual malice notwithstanding that they involve relevant comments condemnatory of individuals."*

Finally, the following passage is taken from **Bowen v Hall**[13]

> *"It is better for the general good that individuals should occasionally suffer than that freedom of communication between persons in certain relations should be in any way impeded. But freedom of communication which it is desirous to protect is honest and kindly freedom. It is not expedient that liberty should be made the cloak of maliciousness."*

17. These passages establish that the rationale of the defence of qualified privilege is rooted in the public policy of balancing the good to society in allowing certain communications in the public interest to be unfettered, against the tenet that one person ought not to be able to speak ill of another in circumstances to cause damage to his reputation. In modern times, the defence is best recognized by the following passage of Lord Diplock in **Horrocks v Lowe**[14](emphasis mine):-

> *'…as a general rule English law gives effect to the ninth commandment that a man shall not speak evil falsely of his neighbor. It supplies a temporal sanction: if he cannot prove that defamatory matter which he published was true, he is liable in damages to whomever he has defamed…The public interest that the law should provide an effective means whereby a man can vindicate his reputation against calumny has nevertheless to be accommodated to the competing public interest in permitting men to communicate frankly and freely with one another about matters in respect of which the law recognizes that they have a duty to perform or an interest to protect in doing so. What is published in good faith on matters of these kinds is published on a privileged occasion."*

[11] (1872) L.R. 7 C.P. 606 (Gatley supra pg
[12] [1917] A.C. 309
[13] (1881) 6 QBD 333 @ 343 (Gatley, supra para 14.4)
[14] [1974] 1 All E.R. 662 @ 668-669

18. As its name suggests however, the availability of the defence is subject to certain qualifications which are best identified from the well-known passage in **Toogood v Spyring**[15]as follows:-

> *"In general an action lies for the malicious publication of statement which are false in fact and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publications as malicious unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral or in the conduct of his own affairs, in matters where his interest is concerned. In such cases the occasion prevents the inference of malice which the law draws from unauthorized communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits."*

From this passage it can therefore be seen that the defence is subject to the absence of actual malice and is dependent upon the categorization of the occasion on which the statements were made, as being pursuant to the discharge of some legal, moral or social duty, or interest of the defendant. The conditions which render the defence qualified only, can now be examined with a view to ascertaining whether the defence is available to the defendants in this case.

The occasion giving rise to the privilege

19. In order to be protected by qualified privilege, it must be found that the communication amongst members of the Tender Committee on that occasion, was both made and received in pursuance of some legal, social or moral duty or interest and that duty or interest must be reciprocal.[16] A legal duty is clearly discernible by the existence of a law which requires it or by virtue of a legal sanction, but a moral or social duty is less clear. In **Stuart v Bell**[17], it was stated by Lindley LJ in considering the nature of a moral or social duty:-

> *"I take the moral or social duty to mean a duty recognized by English people of ordinary intelligence and moral principle, but at the same time not a duty enforceable by legal proceedings…"*

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[15] (1834) 1 CM $ R 181 @ 193.
[16] Adam v Ward, supra per Lord Atkinson @ pg 334
[17] [1891] 2 QB 341 @ 350

It was also stated in ***Stuart v Bell*** that a defendant should not merely believe that he possessed the duty or interest but that such duty or interest should exist as a matter of objective fact. This objective test is relevant as the Defendants contend that the court should be guided by the state of mind of the 2nd Defendant in having the best interest of the public at heart.

20. In determining the issue of whether a moral or social duty exists, one key factor is to understand that the categories in which such a duty can be found are not closed. As was stated in **Reynolds v Times Newspapers Ltd**[18] –

> *"The courts have always emphasized that the categories established by the authorities are not exhaustive. The list is not closed. The established categories are no more than applications, in particular circumstances of the underlying principle of public policy (as per Adam v Ward). Even in 1916 in* ***London Association for the Protection of Trade v Greenlands Ltd*** *– the circumstances that constitute a privileged occasion can themselves never be catalogued and rendered exact. New arrangements of business, even new habits of life, may create unexpected combinations of circumstances which, though they differ from well-known instances of privileged occasion, may nonetheless fall within the plain yet flexible language of the definition to which I have referred.*

21. More particularly, as stated in **Bashford v Information Australia (Newspapers) Pty Ltd**[19], the correct approach in determining the issue of qualified privilege is that:-

> *"…the court must consider all the circumstances and ask whether this publisher had a duty to publish or an interest in publishing this defamatory communication to this recipient…"*

In **Perera v Peiris**[20] the Privy Council stated that the approach must be to strike the right balance between the competing interests (those of public policy and freedom of certain kinds of communication as described above in paragraphs 15-17). It was stated that such a balance would be achieved by the law maintaining flexibility, so that less emphasis is placed on recognising cases as falling within certain classes or categories and instead considering whether particular situations can give rise to the privilege.

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[18] [2001] 2 AC127 @ 194-95
[1919] [2004] HCA 5
[20] [1949] AC 1 @ 20

Additionally, the duty or interest is normally easier to discern where there is some existing relationship between the maker and recipient of the statement, but such an existing relationship is hardly conclusive as to the existence of the occasion of the privilege[21].

22. The instant case can therefore be examined in accordance with the test as simply stated – with respect to the subject matter of the words spoken, did the makers of the statements have a duty or interest in so doing and the recipients, a corresponding duty or interest to receive the statement. This case concerns a committee established under the auspices of the Ministry of Health of the Government of Belize. The functions of the committee entail Government oversight of the issue of the regulation and supply of pharmaceuticals to members of the public. The functions of the committee therefore concern a matter of public health and interest and it is considered fairly said that the members of the committee have a moral and social duty in relation to communications between them which touch and concern the committee's functions. The issue of the Chief Pharmacist's execution of her duties in signing customs entries for suppliers of pharmaceuticals to the public, was not a matter over which the Committee exercised control.
23. However, matters affecting the ability of suppliers to provide pharmaceuticals to the public would legitimately engage the attention of the Tender Committee and so give rise to a duty to communicate amongst themselves with respect to the alleged failure by the Chief Pharmacist to carry out her duty. With respect to particular categories, *Gatley on Libel & Slander* [22] states that '*communication of complaints and adjudications between members of an association and a domestic tribunal within the association have long been held to be privileged*.' The communication amongst members of the Tender Committee regarding the alleged failure of the Chief Pharmacist to carry out her duty of signing customs entries is found to have attracted the protection of qualified privilege.

[21] Kearns v General Council of the Bar [2003] EWCA Civ. 331 @ 334
[22] Supra, @ para14.45.

Malice

24. The question which now arises is that of malice, which will defeat a claim of qualified privilege. The burden is on the claimant to establish malice and for the law on this issue one need look no further than **Horrocks v Lowe**[23] which is said to have restated the law on malice in relation to qualified privilege in authoritative terms[24]. According to Lord Diplock in ***Horrocks***, qualified privilege may be defeated where the defamatory words are uttered for an improper motive:-

> *"'Express malice' is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.*
>
> *The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person…"*
>
> *"…what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, 'honest belief'. If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true."*

25. Arising from these passages are the parameters for a finding of malice capable of defeating a defence of qualified privilege. The desire to injure, must be the dominant motive of uttering the defamatory words, as opposed to furthering the interest or duty of the occasion of the privilege. The path to discovery of such a motive is to be

[23] Supra per Lord Diplock @ pgs 149-150
[24] Gatley supra @ para 17.2

inferred from what the defendant did, said or knew. Where there is no honest belief in the truth of what is said, (whether by reason of knowledge of the untruth or recklessness to a lack of truth), this is generally taken as express malice. On the other hand Lord Diplock goes on to say[25]that the assessment of one's honest belief in the truth of a defamatory statement must take account of the fact that:-

> *"…In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value."*

Additionally, Lord Diplock recognised that differences in temperament, training and intelligence (amongst other things), will affect the manner in which different persons process information in order to arrive at the conclusions they then utter. The manner in which a person has arrived at a conclusion may nonetheless still be regarded as an honest belief and the law must take the individuality of persons in this regard as it finds them.

26. This is the law to be applied in considering the issue of malice as it pertains to the statements of the Defendants herein. According to the counsel for the Claimant, the malice to be attributed to the statements is patent, as the Claimant clearly could not have been on strike as there was no industrial action. Further, none of the Defendants actually knew where the Claimant was, nor did they take any steps to ascertain her whereabouts and the 1st Defendant was not even in the country at the time the statements were uttered, thus he certainly could have held no honest belief of the Claimant's actions or absence. On the other hand, counsel for the Defendants submits that their honest belief in the statements uttered must be taken in the context of their honest desire as a committee concerned with the supply of pharmaceuticals to the public, to find a solution to a problem that affected that very interest of supply of pharmaceuticals to the public.

[25] Horrocks supra @ 669

At this juncture the Court must balance the competing interests underlying the defence of qualified privilege as well as take into consideration the words of Lord Diplock as to the varying manners in which ordinary people might tend to arrive at conclusions at the root of defamatory words.

27. It is also to be considered that inference of motive is to be taken from what a defendant said, did, or knew. To carry out this exercise as a whole, one must have regard to the evidence. The statement of Defendant Lima that the Claimant was on strike has already been put into context as opposed to being taken literally. The words implied that the Claimant was first of all unaccounted for at her job and expressly stated that she was refusing to sign customs entries which was her job and that was to the detriment of the public interest. This Defendant admitted under cross examination that he did not believe the Claimant was on strike (this is considered of no moment as the implication is not taken literally), but he also admitted that he had no idea where the Claimant was, nor as to any reason for her absence. It is further the case that this Defendant under cross examination, could speak to having received only one call from a concerned supplier as opposed to the case as pleaded, which made it out that there were several calls, from concerned suppliers, which then prompted the emails.
28. The gravamen of the defamatory words is the clear implication of the element of willfulness in the Claimant's absence and refusal to do her job and the fact that her refusal could seriously affect the health of the public. There was no evidence which was adduced, from which it could be concluded that there was any reason for any conclusion to be drawn as to any refusal to carry out her duties, solely by virtue of the fact that the Claimant at that point in time could not be located. It was one thing to put the fact of the Claimant's unexplained whereabouts and the corresponding problem to suppliers before the committee with a view to finding a solution.

In so doing however, it was quite another thing to impute wrongdoing, unprofessional conduct and dereliction of duty to the Claimant, without knowledge of the reason for her absence - and with no apparent basis (at least not from the evidence), to allow such a view to be taken, much less termed an honest belief. This view is held with respect to all three defamatory statements.

29. The makers of the defamatory statements were not ordinary men on the street in respect of whom the words , they were all professionals in their own right from whom one would expect a more measured response to what was professed to be a serious concern. It is therefore found, that on the particular circumstances of the case, there was not an honest belief held in the defamatory words spoken and the defence of qualified privilege in relation to all three Defendants therefore fails.

Issue (iii) – Damages to be awarded to the Claimant.

30. Unlike slander in which a claimant must prove actual damage, libel is actionable per se, on the basis that it is presumed that publication in and of itself has resulted in damage to the reputation of the person defamed. The Claimant has submitted three Belizean authorities[26] in support of his claim for damages submitted in the sum of $30,000. The defamatory attacks in these cases were of far greater severity than that of the instant case and it is not considered that the cases are comparable. Additionally, these cases did not consider any principles upon which damages ought to be assessed. In this regard reference is made to **Ramsahoye v Lall and another**[27]in which the Court of Appeal of Guyana enumerated a number of factors to be taken into account in calculating an award of general damages for defamation. These factors are:-

[26] **Robert Garcia & John Flowers v Andrew Steinhauer & The Belize Times**, Claims Nos 4 & 5 of 2006 ($30,000); **Lois Young Barrow v Andrew Steinhauer & The Belize Times**, Claim No 561 of 2006 ($30,000); and **Said Musa v Ann-Marie Williams et al**, Claim No. 376 off 2005 ($25,000).
[27] (2015) 85 WIR 399

(i) the nature and gravity of the defamatory imputations;

(ii) the objective of the defamatory publications;

(iii) the conduct of the defendants;

(iv) the manner in which the trial was conducted by the defendants;

(v) the distress and anguish caused by the defamatory publications;

(vi) the aggravation attending the scale of the injury caused to the victim of the imputations;

(vii) the calculation and deliberation preceding the defamatory publications;

(viii) the use of the media as a weapon of character destruction and professional degradation;

(ix) the need for compensation for libel to be an effective as well as a necessary deterrent;

(x) awards in other defamation cases, including awards in countries of the Commonwealth Caribbean of which Guyana was a part; and

(xi) the effect upon an award of an obvious intention on the part of the defendants to frustrate the victim of the imputations by speculative and embarrassing allegations which they did not intend to prove.

31. In the above case (***Ramsahoye***), the libel claim was brought by a highly qualified medical practitioner of long-standing and esteem in Guyana, against publishers of a newspaper, in respect of several newspaper articles published about the plaintiff. The trial judge found that the publications were '*unprovoked, did unlawful injury to the character and reputation of the medical practitioner, that the practitioner had been demeaned and humiliated in the eyes of the public, that there had been injury to the appellant's feelings, that the defence had been outrageous and contrived and without legal substance and that there had been no remorse or apology*.' An award of general damages was made in the sum of equivalent to US$21,000 and upon appeal by the medical practitioner, the Court of Appeal substituted that award with one for approximately US$55,000 along with a further US$14,000 as aggravated damages. In arriving at those awards the factors listed above were enumerated and whilst some of those factors obviously arise from the particular circumstances of the case, for the

most part, they can be utilized for general application upon consideration of a claim for damages.

32. Given that there are local awards to consider[28], it would be useful to consider the ***Ramsahoye*** factors against the circumstances giving rise to these awards and so obtain an idea of where an award might appropriately be placed in the instant case. All three cases (***Garcia & Flowers***; ***Lois Young Barrow***; and ***Said Musa*****)** concerned newspaper publications and the nature and import of the defamatory words therein respectively contained were far more egregious. It should be noted that albeit there was a claim for an additional libel by means of the emails having been discussed at a press conference the Court made no finding in relation to publication at the said press conference as the words complained of were not specifically pleaded. Returning to the authorities cited, it is considered that although the requirement for malice (in its pure technical sense) was found and the defence of qualified privileged accordingly defeated, the sting of the defamatory words is not comparable to those in the authorities cited.

33. From a starting point of consideration therefore, the award of damages contemplated will be on the lower end of the spectrum of the awards made in those authorities. Additionally, it is considered evident that the Defendants herein would have borne the brunt of any public embarrassment arising from publication of the emails, having been caught wrong footed in public, as the Claimant was on sick leave as opposed to refusing to attend her duties as the emails had suggested. With reference to a few specific factors listed in ***Ramsahoye*** – (i) the nature and gravity of the defamatory words is found to be relatively minor; (ii) the objective of the publications is found not to have been to embarrass the Claimant publicly (indeed the emails were never meant for her eyes nor for the public domain); and (iii) the degree of calculation and deliberation preceding the publications in the circumstances is found to be nil.

[28] Fn 24 supra

34. Further to the consideration of these factors, it is felt that the matter is one which could have been resolved in the first instance when the emails entered the public domain, had the Defendants shown some measure of character in tendering a public apology to the Claimant. On the other hand, whilst one is always entitled to seek redress of a legal wrong in the court, not every slight is worthy of acknowledgment as such or of the time and expense of judicial proceedings. With that said, it is considered that the award of damages will be nominal, as an acknowledgment that the defamatory words uttered of the Claimant are not protected by qualified privilege. As the tort is actionable per se, the nominal award is not literally a 'small' award and the sum of $5000 is awarded as general damages. No case for aggravated damages is raised on the evidence. As had been decided at the stage of case management, prescribed costs in the sum of $12,500 are awarded on a pre-determined value of the claim of $50,000.

Disposition

35. The matter is disposed in the following manner:-

(i) The claim for defamation by way of publication of emails by the 1st, 2nd and 3rd Defendants is successful;

(ii) Nominal damages in the sum of $5,000.00 are awarded to the Claimant for general damages only; and

(iii) Prescribed costs in the sum of $12,500.00 are awarded to the Claimant.

(iv) Statutory interest is awarded from the 24th October, 2016 on the sum awarded until payment.

Dated this 13th day of December, 2016.

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Shona O. Griffith
Supreme Court Judge.