

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2010/0189

BETWEEN:

TERRANCE SANSOM

Claimant

And

COLIN TURNER

Defendant

Appearances:

Ms. Shahida Ali-Schneider and Ms. Stacey-Ann Saunders-Osbourne for the Claimant
Mr. Dane Hamilton Q.C. and Mr. D. Raimon Hamilton for the Defendant

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2010: November 24, 25
2011: May 31
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JUDGMENT

[1] **MICHEL, J.:** The Claimant, Terrance Sansom, is an Englishman who over the years developed an affinity to Antigua and Barbuda to the extent that, according to his evidence, he now spends two thirds of his time in this country and only one third in his native England. The Defendant, Colin Turner, is a national of Antigua and Barbuda who has carried on business as a building contractor and a restaurateur. The two met around 2002

while the Defendant was operating Putters Bar and Grill and the Claimant was apparently a customer of that establishment. In 2003 Putters Bar and Grill closed down over lease payments by the Defendant to the owners of the property and the Defendant subsequently approached the Claimant with a view to having him invest money in the purchase, renovation and development of Putters, which property had been offered for sale by its owners. In 2005 the Claimant and the Defendant agreed to go into business together and selected the vehicle of a company called "Grand City Limited" to drive their business relationship. It was agreed that the company would be established, initially with the Defendant as the sole incorporator and shareholder; that the company would purchase the three acres of land, together with the building(s) thereon in which Putters Bar and Grill is housed; the company would apply for a non-citizen's land holding licence for the Claimant to enable him to hold shares and a directorship in the company; upon the grant of the licence, the Claimant would hold 52% of the shares in the company and the Defendant would hold the other 48%, and the Claimant would be named as a director of the company together with the Defendant.

[2] In keeping with the agreement between the parties, the company was incorporated in May 2005 and the property was purchased at a cost of \$2,500,000, paid for with funds provided by the Claimant, together with legal and other fees for the transaction. In June 2005 Putters reopened and resumed its operations and in July 2005 the company applied for the non-citizen's land holding licence for the Claimant. Between 2005 and 2007 the Claimant continued to invest money in the company until the relationship between the Claimant and the Defendant broke down around March 2007. After that, the Claimant and the Defendant started to communicate with each by means of lawyers' letters. This culminated in the Defendant writing a letter to the Attorney General making various statements concerning the Claimant and withdrawing the application made by Grand City Limited for the non-citizen's land holding licence for the Claimant. It is this letter which has given rise to this defamation action.

[3] In the letter to the Attorney General, the Defendant wrote: "My Company applied for an Alien Landholders License in July 05. Unfortunately I have received information that Mr.

Terrance Sansom who was applying for a shareholding in my company is being investigated by the Inland Revenue Department in England and also that the funds he intends using to finance the construction of the hotel are questionable and possibly illegal." He also stated in the letter that he no longer has any interest in continuing his relationship with the Claimant; that he has sourced financing from Antiguan investors; and that he no longer requires the application for the licence to be processed.

[4] On the basis of the words quoted in the previous paragraph, the relevant government department scrapped the application for the Claimant to be granted a non citizen's land holding licence, the Defendant remained the sole shareholder and director of Grand City Limited, and on 26th March 2010 the Claimant sued the Defendant for defamation, claiming the following relief:

1. Damages for libel, including aggravated damages;
2. An Order restraining the Defendant whether by himself, his servants or agents howsoever from repeating, publishing or otherwise disseminating the same or similar words defamatory of the Claimant;
3. Such further or other relief as this Honourable Court deems fit;
4. Interest pursuant to statute; and
5. An Order that the Defendant do pay the Claimant's costs.

[5] The Defendant filed a Defence to the claim on 26th April 2010 denying that the words complained of bore or were understood to bear or were capable of bearing the meanings alleged by the Claimant and pleading justification and/or absolute privilege, while the Claimant filed a Reply to the Defence dated 17th May 2010 joining issue with the Defendant on his Defence.

[6] The issues for determination by the Court are as follows –

1. Were the contents of the letter libelous?
2. Does the defence of justification apply to the contents of the letter?
3. Were the contents of the letter protected by absolute privilege?

4. Is the Claimant entitled to damages and, if so, how much?

- [6] At case management conference on 15th June 2010, the Learned Master ruled that the words alleged by the Claimant to be libelous are capable of bearing the defamatory meanings alleged in the Statement of Claim, except paragraph 5 (vii) thereof.
- [7] At the trial on 24th and 25th November 2010, the Defendant admitted the defamatory imputations of the words used in the letter. Under cross examination, he said: "By the statements in the letter to the Attorney General I was saying that the Claimant was not a person who should get a non citizen's land holding licence that the Claimant was not an honourable man not a person of integrity I was in essence saying that it was possible that the source of the Claimant's funds was illegal. By saying what I did I am indicating that it was my belief that the Claimant was involved in illegal activities and using questionable funds.... I accept that what I have said concerning the Claimant in my letter of 23rd October 2007 is saying to the Attorney General that the Claimant was not a good sort."
- [8] The first issue of whether the contents of the letter were libelous is therefore determined in favour of the Claimant, as per the Defendant's own admissions. The next issue then becomes whether the words were justified and/or were protected by privilege.
- [9] As to the defence of justification, the legal position is that it is a defence for the Defendant to establish that the imputation in respect of which he is sued is substantially true. He must prove though that the defamatory imputation is true; it is not enough for him to prove that he believed that the imputation was true, even though it was published as belief only.
- [10] The Claimant, having alleged and proved that words defamatory of him were published by the Defendant in a letter to the Attorney General, it was then for the Defendant to prove that the defamatory imputations were in fact true, and not just that he (the Defendant) believed them to be true. This the Defendant failed to do, either in the viva voce or in the documentary evidence which he presented to the Court. In fact, under cross examination,

the Defendant admitted that some of the defamatory statements he made about the Claimant were in fact erroneous and that others were based on his belief, without being able to factually justify that belief. The defence of justification has not therefore been made out by the Defendant.

- [11] The Defendant's alternative defence is absolute privilege. This defence arises in situations where the law recognizes that it is for the public benefit that a person should be able to speak or write freely and that this should override (in the case of absolute privilege) or qualify (in the case of qualified privilege) the protection normally given to reputation by the law of defamation. In most cases the protection of privilege is qualified, meaning that the defence is displaced by malice; but there are occasions on which public policy and convenience require that a person should be wholly free from even the risk of responsibility for the publication of defamatory words and no action will lie even though the defendant published the words with full knowledge of their falsity and with the express intention of injuring the plaintiff.
- [12] According to Gately on Libel and Slander, Ninth Edition, Chapter 13, Page 281 - "An absolute privilege attaches to the following statements: (1) Statements made in the course of judicial proceedings. (2) Statements made in the course of other proceedings of a judicial nature. (3) Statements made by one officer of state to another in the course of his official duty. (4) Statements made in the course of parliamentary proceedings. (5) Statements contained in reports published by order of either House of Parliament. (6) Fair and accurate reports of proceedings publicly heard before a court exercising judicial authority (7) Statements contained in reports of various statutory officers and bodies."
- [13] The defamatory statements made by the Defendant in his letter to the Honourable Attorney General do not fall into any of the seven categories enumerated by the authors of Gately on Libel and Slander, and the authors have said, at page 282, "that the courts are unwilling to extend the number of these occasions on which no action will lie."

[14] The Defendant seeks in his Defence to bring into the category of absolute privilege statements made by him in an unsolicited letter written by him to the Attorney General withdrawing the application previously made for a non citizen's land holding licence on behalf of the Claimant. Inasmuch as the Attorney General may be "the chief law officer of the State of Antigua and Barbuda who is charged generally by law to look after the public interest and the maintenance of the due administration of justice within the State," there is no authority for rendering voluntary communications made to him by the Defendant with the intention of withdrawing the application made on behalf of the Claimant for a licence to enable him to exercise rights of ownership over the property which he paid for, as being protected by absolute privilege against the defamatory imputations of the words used in the letter. This is not a situation akin to that of the defendant in the case of *Westcott v Westcott*¹ where the defendant had made a report to the police of the commission of a crime by the claimant and the claimant sued for defamation over the contents of the report. The English Court of Appeal held in that case that such a complaint, even though it did not result in prosecution, was absolutely privileged because society expected criminal activity would be reported, investigated and prosecuted (when appropriate) so that all those who participated in a criminal investigation were entitled to the benefit of absolute privilege in respect of statements which they made. The Court of Appeal held that the privilege applied whether the participants were informants, investigators or prosecutors and that it was established that the test was whether each statement could fairly be said to be part of the process of investigating a crime or possible crime.

[15] In the present case, this Court finds that the occasion of the letter written by the Defendant to the Attorney General was but a voluntary communication by the former to the latter intended only to withdraw the application previously made for a licence to enable the Claimant to hold shares and a directorship in Grand City Limited and was not one attracting absolute privilege, and the Defendant is liable in law for the defamatory statements made by him in the aforesaid letter.

¹ [2009] QB 407

[16] The Defendant having been found liable for defamation against the Claimant and the defences of justification and absolute privilege having been ruled inapplicable to the facts and circumstances of this case, the issue then becomes whether the Claimant is entitled to damages and, if so, how much.

[17] The Claimant is of course entitled to damages for the injury to his reputation occasioned by the publication to the Attorney General of the defamatory imputations against him. The sum of \$25,000 was put forward by Counsel for the Claimant as a figure for consideration by the Court bearing in mind the Claimant's claim to general and aggravated damages and the Court finds this figure to be acceptable in the circumstances of this case, considering the gravity of the libel and its impact on the standing of the Claimant as an investor in Antigua and Barbuda, the malice of the Defendant in publishing it to the Attorney General and the refusal of the Defendant, whether before or even at the trial, to apologise to the Claimant for its publication.

[18] The Court's Order is as follows:

1. The Claimant is awarded damages for defamation in the amount of \$25,000.
2. The Defendant is to pay interest on the sum of \$25,000 from the 26th day of March 2010 (when the claim was filed) to the 31st day of May 2011 (the date of judgment) at the rate of 5% per annum.
3. The Defendant is to pay prescribed costs to the Claimant in the sum of \$7,942.80 (being 30% of the sum of the damages of \$25,000 and the interest of \$1,476).

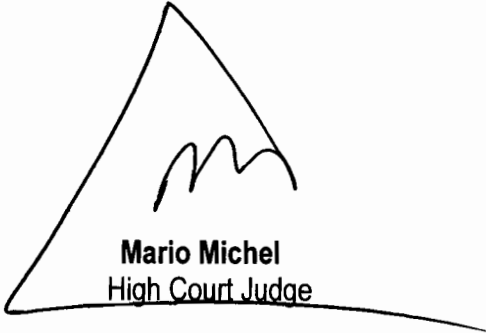
[19] The following authorities were cited by the parties and considered by the Court:

1. Berkoff v Burchill et al;²
2. Cardinal King v Vernon D. Khelawan et al;³
3. Westcott v Westcott;¹

² [1936] 4 ALL ER 1011-1013

³ ANUHCV 2001/0132

4. Edwards v Bell;⁴
5. Clarke v Taylor;⁵
6. Alexander v N. E. Railway;⁶
7. Gatley on Libel and Slander, Ninth Edition.



Mario Michel
High Court Judge

⁴ (1824) 130 E.R. 162

⁵ (1836) 132 E.R. 252

⁶ (1865) 13 WR 651