

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00507

BETWEEN

ANDREW GABRIEL

Claimant

AND

PHILLIP EDWARD ALEXANDER

Defendant

Before The Hon. Madam Justice C. Gobin

Date of Delivery: May 01, 2019

Appearances:

Mr. Douglas Mendes S.C. leading Mr. Clay Hackett instructing by Mr. Mohamed Haniff for the Claimant
The Defendant in person

REASONS

Introduction

1. In the course of the two day trial of this matter the Defendant found himself in the unfortunate position of having no lawyer after day one. He indicated his willingness to proceed on his own although he had never been sued before. He submitted a closing statement and then I allowed a second one when he requested permission. I felt that I should accommodate him. He had no assistance from Counsel in preparing them and he said so. He was unfamiliar with the applicable rules.
2. Having regard to the contents however, I think it is necessary at the outset to indicate or rather to remind the Defendant that this case was not as he perceives it about truth, justice and a better country for us all. There are cases that deal with these noble causes, but this is not one of them. It is not the first suit of its kind brought against an active politician such as the Defendant and it will I am sure not be the last. The case only confirms the limits of two important constitutional rights, the

right to freedom of expression and the right to the expression of political views and it has long been established that these rights are not absolute. They do not trump the laws of defamation.

3. This is a defamation action, plain and simple. The Defendant made several statements about the Claimant which the latter claims are defamatory. I have only to decide whether the words carried the defamatory meanings alleged and whether there is any merit in the defences which were raised by the Defendant's legal representatives when they filed his defence and what should be the quantum of damages recoverable if the Claimant were to succeed. The impassioned appeals about any other significance of the case in the current political environment or its impact on the future of our democracy are I regret to say, misplaced and misguided.

The Proceedings/Amendments

4. This claim was filed on 9th February 2017 following the publication of the second of two statements made by the Defendant on 8th February 2017. The date of filing coincided with the date that the Claimant's attorney, Mr. Quamina, issued a pre-action letter. In the course of the proceedings the Claim Form and Statement of Case were amended on two separate occasions to include new causes of action following further utterances and publications made by the Defendant on facebook posts even while this action was pending. The first amendment of 29th March 2017 included complaints arising out of 6 fresh publications made on 9th February 2017, 11th February 2017, 14th February 2017, 9th March 2017, 18th March 2017 and 22nd March 2017 respectively. The Defendant published additional posts on 2nd April 2017 and on 4th April 2017, causing the Claimant to seek to re-amend once more.
5. The amendments were granted without objection, but when I considered their effects more closely I had certain concerns. Very simply put, they had to do with whether the originating process could properly be amended to include causes of action which arose for the first time after the date of the original action. Counsel for the Claimant accepted that each publication constitutes a fresh cause of action and placed reliance on **CPR Part 8.4** which permits the Court to hear and dispose of multiple claims in one set of proceedings so long as it can do so conveniently.

6. The effect of Part 8.4 is not in doubt, but I do not believe it answers my specific concern. The relevant guidance is, in my view, to be found in the **Civil Procedure Vol 1 White Book (2012) page 504 paragraph 17.3.4: -**

Effect of Amendment

“Under the previous rules, an amendment duly made, with or without leave, took effect, not from the date when the amendment was made, but from the date of the original document which it amended. This rule applied to every successive amendment of whatever nature and at whatever stage the amendment was made. Thus, when an amendment was made to the writ, the amendment dated back to the date of the original issue of the writ and the action continued dated back to the date of the original issue of the writ and the action continued as if the amendment had been inserted from the beginning: “the writ as amended becomes the origin of the action, and the claim thereon endorsed is substituted for the claim originally endorsed” (per Collins M.R. in Sneade v. Wotherton, etc. [1904] 1 K.B. 295 at 297). Similarly in the pleadings: “once pleadings are amended, what stood before amendment is no longer material before the court and no longer defines the issues to be tried” (per Hodson JJ in Warner v. S trial)”.

7. As far as I am aware these authorities have not been overruled. In the absence of any CPR provision which clearly permits any other interpretation I can find no reason to depart from this approach which in my view accords with common sense. Amendments which take effect retrospectively cannot give life to claims that did not exist at the date of the original filing.

8. This ruling does not however render the pleadings as to the subsequent publications irrelevant. The learned authors of Gatley on Libel and Slander, 12th Edition para 9:19 p 354 provided guidance as to how they should be treated: -

9.19 Aggravated damages and subsequent publications. The question whether, and if so in what circumstances, a claimant in a libel action is entitled to increase the damages recoverable in respect of the single publication complained of by relying on subsequent publications which are not themselves sued on as separate causes

of action has been considered in two important cases: *Collins Stewart Ltd v The Financial Times (No.2)* and *Clarke t/a Elumina Iberica UK v Bain & Prolink Holdings*. The effect of these two decisions is, it is suggested, as follows. First, subject to general case management principles, evidence of subsequent publications in respect of which no claim is brought is admissible in so far as the later publications substantially repeat the same imputation and shed light on the motive or state of mind of the defendant in making the imputation in respect of which the claim is brought. Thus where the subsequent publications help to prove the existence of a malicious motive or establish the existence of malice they may be led in evidence. Second, where the evidence also establishes another cause of action, then the jury must be cautioned against giving damages in respect of that cause of action. Moreover, in such a case the defendant is entitled to plead matters which would afford him a defence to that cause of action, if it had been pleaded as a separate cause of action, including issues of meaning. **[Emphasis added]**.

9. In this case the subsequent publications formed part of the Claimant's pleaded case and the Defendant was at all times afforded the opportunity to meet the allegations and to raise full defences to all of them. They were all identified in the agreed statement of issues filed on 10th November 2017 and the Defendant accepted that he had made them and that they were made of the Claimant. In the circumstances I shall consider the evidence of the subsequent publications and the content and tenor of them in assessing the general conduct of the Defendant, and his state of mind to determine whether he acted with malice. These factors are all relevant to the claim for aggravated damages.

The Parties

10. The Claimant, Andrew Gabriel is a businessman. He is the Managing Director of Norman Gabriel Insurance Limited, an Insurance Brokerage, family owned firm, which has been in operation since 1990. Mr. Gabriel and his family are members of the Syrian-Lebanese Community in Trinidad. The Claimant's mother Rosalind Gabriel is a stalwart in their community. She is an icon and leader in the local culture and arts industry. She has participated as a bandleader in Adult and Children's Carnival Competitions. She was the President of the Trinidad and Tobago Carnival Bands Association. She

received a National Award, the Humming Bird Medal (Bronze for Culture) in 2007. The Claimant's sister, Sophia was for many years the Syrian Lebanese Women Association's President.

11. The Claimant held political office for a short period in the year 1995. He was appointed a Senator under a United National Congress (UNC) Government by the then Prime Minister, Mr. Basdeo Panday. The Claimant, says that that was the extent of his direct involvement in national politics. Since 2008 he became a supporter of the People's National Movement (PNM). He openly declares himself to be a "strong party supporter". He indicated his voluntary involvement as part of the production team for PNM conventions and campaign events for both the 2015 General Elections, and 2016 Local Government Elections. Mr. Gabriel does not admit to being a "PNM financier" as the Defendant repeatedly describes him to be.

The Defendant

12. The Defendant describes himself as a Political and Social Activist for more than twenty-five (25) years. He comes from a family steeped in social and political activism. He and his parents have been involved in many charitable projects. In 2017, the Defendant founded the Progressive Empowerment Party (PEP). He has been promoting the PEP as alternative to the PNM and UNC. The Defendant is therefore an active politician. Further, he describes himself a hard hitting journalist, who has a style of jarring the public into thought and inciting action. In his own words, he does not "shy away from addressing issues of national importance no matter how controversial" or on which side of the arena these issues may fall.

13. Mr. Alexander has been invited from time to time by radio hosts as a guest. He continues to discuss and bring to the fore issues of social importance via his social media pages, blogs and radio station appearances. He says through these he has continued to call for transparency and accountability in Government.

14. The parties are not unknown to each other, though the extent of the relationship is not agreed. The Claimant admits he has known Mr. Alexander for a number of years, but describes him as no more than an acquaintance whom he came to know through a mutual friend. Mr. Alexander on the other

hand claimed to know Mr. Gabriel, first, as the latter's business customer and then socially. He claimed to be familiar with the Claimant's immediate family coming to know and refer to the Claimant's parents as "Uncle" Norman and "Aunty" Rosalind out of respect and affection. Mr. Gabriel and his mother both deny this. The Defendant seemed to believe that he and the Claimant were friends even until these proceedings were filed. The Defendant also believes that Mr. Gabriel is a PNM Financier who by reason of that status is a person in position of political influence in the country.

The First Statement

15. On 8th February 2017, the Defendant appear on a radio programme Ground Report which was broadcast on More 104.7 FM. He uttered the following words:

"When Andrew Gabriel was now getting involved with the PNM, in 2010, you know, and I said 'Andrew, you sure you know what you doing?'. He say 'Phil, this is not our first rodeo you know. We've done this before. These people know this thing like a science, they know this thing like a science ...

Let me tell you something eh, according to the PNM spin this morning, Andrew Gabriel, come out from behind your little sycophants. Anybody that wants to call me out, call your name...

But I want to tell Andrew Gabriel this, Andrew, Rosalind Gabriel, Norman Gabriel, Sophie Gabriel, you recognising them names? I will put your business, I will put Carlos Sabga daughter business in the road brother. Pull back your talking heads because when I come at you Andrew Gabriel, allyuh Gabriel family will pack up and leave this country. Hear what I telling you. Let's go. [Emphasis Added]

I will put Andrew Gabriel... I am not talking to your talking heads... I am ignoring your spranger piper Dane Wilson, **I am talking to you and I will put your business in the road. Tell your whole family, Phillip Edward Alexander say so ..."** [Emphasis Added]

I want Andrew Gabriel, doh send CEPEP Syrians to me. You come brother. **Let you and me discuss how Normal Gabriel Insurance Brokers went from a 2x4 with a T&TEC, what it is, what allyuh get, the pension fund? Let we talk nah brother, live on air** ... this is a live video. Andrew Gabriel... (host interjects:

you are referring to Andrew Gabriel, the PNM financier?)... the PNM owner and Rohan Sinanan... also you, call Andrew now on the phone and tell him, pull off spranger piper Dane Wilson from Phillip tail, tell him pull off CEPEP Syrian George Elias from Phillip tail because I will put information in the public space and you all will have to go home and pack and leave...”

16. The Defendant admits that he made the statements and that he made them of the Claimant. The programme was broadcast live on the Defendant’s facebook page. He caused it to be recorded and reposted it thereby enabling its subsequent rebroadcast over social media. There is no issue as to the extent of the publication. The Defendant claimed to have approached almost half a million followers after he posted another of his videos a few weeks later.

The meaning of the words

17. The Claimant claimed the words meant or were understood to mean in their natural and ordinary and or inferential meaning that the Claimant has engaged in acts including but not limited to criminal or corrupt acts which are so odious and contemptuous that he and his family will have to leave the country when those acts or information about them is exposed to the public. It clearly suggested that the Defendant was in possession of such information and that he could put it out there for public consumption.

18. The Defendant’s answer as to the meaning was that against the background of the personal relationship between the parties and their families, they would have both come to have knowledge of information that had the potential to embarrass each other’s families. When he made the statements, he called the names of the Claimant’s family members only to sensitize him as to how it felt to have innocent names dragged into a personal attack. The way he saw it, he stopped short of actually defaming anyone because he deliberately gave no information about them. He never intended to defame them. It is convenient to state here that the defendant’s intentions in a defamation action are irrelevant.

19. The Defendant’s case on meaning has not been helped by the concession of Mr. Camacho, the attorney who was present on the first day of trial, in the course of his cross examination of Mr.

Gabriel, that the words did in fact convey a threat. Counsel suggested to Mr. Gabriel though, that the effects could not have been so harmful since Mr. Alexander's threat to put out information was an empty one as the Claimant would have known, since there was nothing to be exposed.

20. In my assessment, what the Defendant issued was a serious threat with extremely damaging imputations against the Claimant and named family members. It is a strong thing to suggest that you hold such information on someone and his family, that if you were to expose it, they would only escape the consequences by leaving the country. The imputation is that the unspecified conduct is so gross and despicable that they would not be able to show their faces in this country once it was revealed. This kind of statement could only encourage speculation on a range of conduct including all manner of corruption and criminal activity. I agree with Mr. Mendes' submission that the effect on the Claimant's reputation may even have been worse than if the Defendant had made perhaps one single specific allegation of wrongdoing.

The first facebook post

21. Sometime later on 8th February, 2017 following the radio interview the Defendant posted a facebook post with the following words: -

"I sent a message to the PNM financiers Sinanan and Gabriel live and on air this morning that I will be ignoring their personal attackers and respond to THEM directly.

I am not playing this rounds.

I have no time for CEPEP Syrian George Elias and PNM piper Dane Wilson and their pathetic attempts at personal attacks. I don't even have time for puppet Rowley and dapper Don al Rawi, whatever they **say about me, I will consider it as said by Gabriel and Sinanan, and I will respond in kind."**

"A former Attorney General sent to the radio station to silence me?

Friend, you all don't even have a clue what time it is yet. I will unravel your bandit clan right here in the public arena. You go write your letters."

The meaning of the facebook post

22. Under our law in its current state, and in the absence of legislative and administrative measures to control party financing, it is not defamatory to say of the Claimant that he is a “PNM party financier”. The Defendant could have said that with no legal consequences. But Mr. Alexander did not stop there. He promised the Claimant further that: “he would unravel your bandit clan right here...”. The Claimant claimed that these words meant and were understood to mean that the Claimant is a PNM Financier and that he and his family (his bandit clan) are involved in criminal activity and corruption and that Mr. Alexander had information on this which he was prepared to disclose in a public space.
23. The Defendant admitted to being the author of the post. In the course of his cross-examination he sought to explain that he was not referring to the Gabriel family but rather to the PNM family. Either way the words impute corruption in the Claimant and others. Indeed Mr. Alexander repeated the statement that Mr. Gabriel was corrupt even in the witness box. But I reject the Defendant’s explanation as to whom he was referring.
24. The post came on the heels of the Ground Report radio interview earlier that morning and the statement was consistent with the one the Defendant made that first time when he went so far as to name the Claimant’s family members. It was made in the context of his complaint that a former Attorney General had attended the radio station following the interview.
25. Against that background I find that the words referred once again to the Claimant as well as to his family. They meant once again that their entire “clan” or family was involved in graft and this was facilitated by Mr. Gabriel’s PNM connection as a “Party Financier”. In repeating his claims the Defendant was making it clear he was not going to be cowed. He was standing his ground. No other member of the claimant’s family has taken action as a result but I consider the attack on his family members and the effect on the Claimant to be relevant.
26. The publication of these two statements would only have caused injury the Claimant’s reputation. The ordinary reader in an age of social media does not have to be ‘avid for scandal’. She or he is constantly bombarded with it even when it is unsolicited. Allegations of corruption have their special

draw on internet chatter especially when they point to persons connected with the established political parties, whether they are in government or not. They are forwarded as they are received. The effect of this kind of dissemination has been described as instantaneous, far reaching and borderless. The publications are also omnipresent.

The Evidence

27. For the Claimant, three witness statements were filed, his own, his mother Rosalind's and that of his close friend and attorney, Mr. Quamina. The Claimant's evidence established his and his family's general reputation. Evidence of good character is generally unnecessary, but his prominence on the society, general reputation are not irrelevant to the issue of damages. And while against the background of his reputation Mr. Gabriel may not have been concerned that Mr. Alexander could be in possession of information which if put in the public space could actually cause his family to flee the country, he was concerned that the Defendant could recklessly just put out "fake" information. Having regard to the content of the subsequent publications and the frequency with which they were rolled out, this concern proved to be not unjustified. The defamation was in any case complete upon the publication of the words.

28. Mr. Gabriel also filed a supplemental witness statement on the 17th October 2018, the purpose of which was to produce a video published on the defendant's facebook page on the 10th October just less than a week before the trial date. In it the defendant uttered these words:

(6) "I am half Syrian, but I am half Syrian who grew up with contempt for the Syrian people, long before they get into drugs and one percent (1%) or the bullshit that they do, I had contempt for the Syrian people of Trinidad and Tobago for what they did my mother, because my mother is not a Syrian, my father was told that if you marry her and in a couple days, they going to have their 55th wedding anniversary, whole families fall apart, that had their mouth to wash on my mother and my father. They suffer dem, and they call her Abeed, my mother was a nigger! They was calling my mother Abeed, the Syrian word for nigger is Abeed. Ask Keith Rowley if he know what all the Syrians around him does call him when he not with them. Because Syrians call my mother Abeed.Nigger!

I grow up with contempt for Syrian people in Trinidad and Tobago. I never like them. I was never part of any Syrian Lebanese organisation. I was never invited, I've never been to a Syrian wedding..."

"The Syrian community in this country never thought that there would be somebody like me, who know their names and the games that they involved in."

"I not saying all Syrian bad, don't get me wrong. They have Syrian people in this country, salt of the earth, and all of them have been given a bad name of some greedy, disgusting, inbred, egotistical sons of bitches."

The claimant relied on the statements above, which were admitted by the Defendant, as evidence of malice.

29. The evidence of the Claimant, as to the injurious effect of the Defendant's campaign on himself, his family, his wife and children was compelling. He did not understand why they were being targeted. The effect on his family caused him great distress. His wife developed sleeping problems. She contemplated taking her youngest child and migrating. She became obsessed with monitoring the Defendant's posts. His two children were distressed by the publications. His son who carries the name 'Norman' as in the firm's, was bombarded with questions. Even the youngest child became obsessed with them. The children could not understand why the Defendant was able to get away with making all these statements and there was seemingly nothing their father could do. The Claimant also gave evidence of the reactions of members of his community at wakes which he attended. There were jokes, whispers and questions about what the Defendant could be holding. In one instance there was speculation about whether it had to do with a particular project. Mr. Gabriel but up a front but he did withdraw from social circles and become a bit reclusive.

30. The evidence of Mrs. Rosalind Gabriel and Mr. Quamina on the deleterious effect of the publications was also cogent and supportive of the Claimant's own. Mrs. Gabriel was not cross-examined. This was significant. She showed in real terms how widespread and far reaching were the publications. She received calls from the USA and Canada. The effect on their lives and normal family activities was disturbing. She spoke of the hurt and embarrassment they felt.

31. The subsequent posts and utterances which the defendant agreed that he made are set out in the agreed Statement of Facts. Having regard to the pattern of publication I accept that the subsequent posts were all part of a sustained attack on the Claimant and that all of them referred to him. The defendant has admitted as much. The evidence suggests that the Defendant ramped up the campaign after he received Mr. Quamina's pre-action letter and he continued even after these proceedings were commenced. Neither of these two events had the effect of deterring Mr. Alexander. I shall return to his conduct which followed and the impact on my assessment of damages.

The Defendant's Evidence

32. The Defendant was the sole witness for the Defence. On the day on which he was cross-examined, on his witness statement he had no legal representation. A defendant who attempts to represent himself even at the stage of his cross examination sets himself a formidable task. Mr. Alexander denied that he said anything defamatory of the Gabriel family members. He maintained he never intended to defame anyone.

33. Mr. Alexander's conduct in the witness box did his own case significant harm. He is obviously passionate about his political views but he exhibited a tendency to be garrulous and therefore unnecessarily expansive in his answers under cross examination. This did not work to his advantage. On the contrary this tendency provided valuable insight into his character. I hasten to make clear that he was not disrespectful to the Court. But down to the end (even in making his final two statements) he demonstrated that he is simply ungovernable and quite reckless when it comes to saying what he wants without fear of consequences.

34. Speaking out against corruption for transparency, accountability and with a view to preventing a collapse of our democracy is a very good thing and it is only to be encouraged. The need for campaign and party financing has been a long standing issue. Citizens understand that unchecked and unaccountable political spending can pave the way for corruption. But the absence of progressive legislation does not justify hurling out unsubstantiated accusations of corruption against individuals on the basis of suspicion and what we regard as "Ole talk".

35. His evidence in chief established the rather shaky foundation for his beliefs about the claimant's "corruption". He said:-

"Over the years, I have also observed that the Claimant's businesses also started to grow, in a way that can only be described as exponentially, which based on reports in the media, public perception and rumor and observation by me, coincided with what can only be reasonably assume to be as a direct result of political connections through the Claimant's family business being granted very large contracts by the various governments. It is the granting of these contracts, through less than transparent means is the issue that I believe to be of grave concern and raises many questions which must be asked." [Para 27 Witness Statement].

36. So dogged is the Defendant in his belief that the Claimant as well as other persons he believes to be financiers are corrupt that he has categorically stated that it would not matter to him if someone who gets a government contract, was in fact the lowest bidder and if the person got it after a process in which all the existing rules were followed. If someone who supports a party is awarded a contract even if all the rules are followed – that person obtained it corruptly. Mr. Alexander genuinely believes the system to be broken. But this kind of obduracy did not help his defence. It suggested that Mr. Alexander is not concerned about the facts so much as he is about maintaining his political position on issues.

37. The Defendant claimed also to rely on an article published in the Express newspaper and written by Ms. Asha Javeed and published in the Daily Express on 5th November 2016. His evidence under cross-examination established that the contents of Ms. Javeed's article did not provide support for his own statements and opinions about corrupt activity on the part of the Claimant because of his PNM connections. Far from it, it established that it related to a period from 2011 to 2015 when the People's Partnership was in Government. This was therefore at a time when government contracts could not have been handed out to the Claimant or his family by the PNM. The Defendant also had to concede that the article did not actually implicate the Claimant in any questionable contract scheme. If this article is what the Defendant was relying upon to prove a substratum of fact on the basis of which he made his statement, it did not assist him. And since what was published in Ms.

Javeed's post had not caused the members of the Claimant's family to pack up and leave, Mr Mendes suggested to him (quite properly I think) that one could only assume that what Mr. Alexander planned to unleash was much worse than anything that Ms. Javeed had written in her piece.

38. The defendant provided no evidence of large contracts being granted to the claimant's family business, or no basis for this claim which he says is at the bottom of the grave concerns and questions which must be asked. The claimant's evidence is that Norman Gabriel Insurance Limited was awarded one contract by the P.N.M. His wife Nathalie's company Trinidad and Tobago Landscaping Company got contracts under both the U.N.C and P.N.M administrations.

Evidence of Malice/State of mind of Defendant

39. Counsel for the Claimant elicited evidence from the Defendant which threw some light on the motives of the Defendant for the campaign against Mr. Gabriel. Mr. Alexander confirmed that the reason he made the first statement during the radio interview on 8th February was because of posts made by third parties DW and BM about him. The agreed bundles of documents contained copies of posts which showed vitriolic exchanges and publications of conversations of DW, BM and their respective followers. Some of the posts regarding the Defendant were full of insults, taunts and allegations that might have been considered on the face of them, seriously damaging to his reputation. But the Defendant took no action in relation to them.
40. No evidence was produced of posts by D.W prior to the radio interviews 8th February 2017, or of any connection with the claimant, but it is clear that Mr. Alexander was convinced that the Claimant was behind the series of on-line attacks of these third parties against him and members of his own family. Under cross-examination he admitted that is why he said what he said on the radio. So was Mr. Alexander speaking out or was he lashing out. In the circumstances of his belief it seemed more like the latter. I concluded that his attack on the claimant was irrational and based on an unsupportable claim that the DW and BM were agents of Mr. Gabriel.
41. Quite apart from his baseless belief as to the involvement of the Claimant in his social media war with other persons, and his misguided reliance on Asha Javeed's post there was another aspect of the

Defendant's evidence which was relevant to his credibility. This all started with the Defendant's interview on 8th February 2017 in the course of which he threatened to unleash information which he had about the claimant and his family. But nothing appeared in his pleadings or in his witness statement. This was not a case in which justification was raised as a defence so that was not remarkable. But even so, the Defendant, while he was in the box offered to give me the information which he had. He asked if I wanted to see the proof. I did not allow new allegations or what would undoubtedly have been scandalous ones to be introduced under the protection of the witness box. The Defendant's request begged the question, if he did have information why did he not just produce it to put an end to the Claimant's case. This conduct did not impress me and it only further undermined the Defendant's credibility. With all of this, the defendant continued to claim that he did not set out to defame.

The Defences

42. The defences raised in answer to the posts of 8th February 2017 were honest comment on a matter of public interest and qualified privilege/responsible journalism. The claimant accepted quite properly that the award of government contracts was a matter of public interest. It bears repeating that justification was not raised. In my opinion the defence of honest comment must fail because the offending utterances reflected the defendant's assertion of facts rather than comment. Mr. Alexander despite his protestations to the bitter end has failed to establish that what he was doing was making honest comments on the established facts. His statements were based on rumours, assumptions, public perception and his own observations which have remained a mystery. That is hardly a foundation upon which to attempt to establish a factual substratum which is necessary for a defence of honest comment to succeed.
43. Under cross examination Mr. Alexander very casually referred to his post of 10th October 2018 about members of the Syrian Community as "a rant". I would have at first been hesitant to describe the contents as such. But encouraged by Mr. Alexander's honesty, I can now indicate that some of his posts in this matter do appear to be 'rants'. The problem with 'rants' is that they are unrestrained and generally delivered in the heat of the moment, so it becomes impossible to distinguish between comment and assertions of fact and this is a factor which is relevant to his defence.. I think in this

case it is fair to say that the two posts of 8th February 2018 especially insofar the words complained of are concerned, appear to contain assertions of fact (as opposed to comment) which have not been established.

Malice / Improper Motive

44. Another problem with “rants” is this, that they often quite unintentionally indicate malice and improper motives. In this case what was disclosed in the “rants” as well as the evidence was sufficient to establish proof of malice and improper motives which have the effect of defeating the claim of fair comment especially when taken together with what I consider to be the wanton disregard of the defendant for the truth of his statements. His cross-examination established that far from acting in pursuance of the noble political goals he claimed to be promoting, this time he was simply actuated by a desire to threaten the claimant into calling off the persons he perceived to be agents of the P.N.M. and whom he believed were put up by Mr. Gabriel. He never bothered to ask Mr. Gabriel if this was so. If he had reliable information in this regard, it was not produced.

45. The telling post of 10th October 2018 and his answers elicited in cross examination established malice and the deep seated animosity of the defendant toward many members of the Syrian Community including the claimant. In the circumstances, I do not believe that Mr. Alexander honestly believes his own statements about Mr. Gabriel. He no doubt honestly believes that among others, all financiers of the P.N.M and everyone who is awarded a governmental contract and most members of the Syrian Community use their connections in the country and are corrupt. But this case is about Mr. Gabriel and I find that Mr. Gabriel just happens to fall within a very wide spectrum of persons perceived by Mr. Alexander to be persons who reap the benefits of political patronage and who are corrupt. He has produced no evidence to justify his selection of Mr. Gabriel and his family out of this group. In other words when he uttered the defamatory statements he was reckless as to the truth of them but carried on in any case because of the malice and improper motives identified.

Reynold’s Privilege

46. Having described himself as a journalist, Mr. Alexander claimed that the statements were made on an occasion of qualified privilege. This defence, too, fails in the light of Mr. Alexander’s acceptance of

the personal motive for publishing the statements. His reliance on the publication of another journalist's story could not salvage the defence. In any case he clearly got Ms. Javeed's story wrong. He drew from it conclusions which could not reasonably be drawn. But more importantly, he confidently asserted that he "does not investigate" and I did not get the impression that there was any good reason why he could not or did not do so in this case. I think his point was that he is a political figure/ journalist who occupies an unusual space in the political landscape. His role does not call upon him to investigate. He does not have to do that. This alone was sufficient to cause me to reject the Reynold's defence.

General Damages

47. The two posts of 8th February 2018 both essentially repeated allegations and imputations of corruption and criminal activity. I consider them to be grave. I have considered the relevant factors bearing in mind that the purpose of damages is to compensate. There is no evidence of any particular impact on the Claimant's business reputation or any financial loss, however the injury to his feelings as the evidence established was significant. This is moreso because of the immeasurable percolation that social media allows especially when allegations of corruption are made. While the family members have not taken action, I have considered the Claimant's injury to feeling was exacerbated because of their hurt and pain over the publications and his inability to protect them. I have considered the range of awards made by our Courts in similar cases including **Conrad Aleong v. Trinidad Express Newspapers Ltd., CV 2006-02092 HCA #1386 of 2003; and Conrad Aleong v. Trinidad Express Newspapers Ltd. Civil Appeal No. 122 of 2009 and Kayam Mohamed and ors v. Trinidad Publishing Co. Ltd and Ors. Civil Appeal No. 118 of 2008; Anand Ramlogan v, Jack Austin Warner HCA# 134 of 2014 and Faaq Mohammed v. Jack Austin Warner CV 2013-04726** . I consider an award to five hundred and twenty-five thousand dollars (\$525,000.00) to be appropriate.

Aggravated Damages

48. I believe that a significant award of aggravated damages is warranted in the circumstances of this case. I have considered the defendant's conduct in relation to the subsequent publications which substantially repeat the imputation of the Claimant being a PNM financier who is together with his

family benefiting from political patronage. I find the publications all have the meaning ascribed to them in the Amended Statement of Case.

49. Mr. Alexander ramped up the attack because the Claimant had the temerity to have his attorneys write a pre-action letter and then to file proceedings. In a post published on the 11th February 2017 he referred to the proceedings filed by a PNM financier and once again threatened to “put thing in the public space”. On 9th March 2017 he put out an invitation to the public to provide supporting evidence after the fact for his baseless attacks and after this claim was filed. He said: -

In paragraph 18: -

“When the PNM came to power a memo was alleged to have been circulated instructing all department heads to renew their organizations insurance through one company.

This was apparently done without tender and suggests a breaking of the procurement rules by a party financier.

If such a thing exists, I want a copy of that memo.”

50. On 18th March, 2017 he published another post which included these words: -

“Andrew Gabriel’s threat that he has a war chest of money to prevent anyone calling his name was underscored by his attorney’s own threat (now made public) to sue me again, and again, and again, but he was strengthened my resolve to look into every contract awarded to Andrew Gabriel, his wife Nathalie Galy Gabriel, their Companies Trinidad and Tobago Landscaping Company Limited and Norman Gabriel and Associates Limited, any relative and or associate.

I call on anyone who has any information that can assist in investigations into the awards of any contract to any of the persons or companies named above to feel free to contact me in confidence as we gather our evidence to not only make our case and defend our position, but to ensure that not only justice prevails but transparency and accountability in the award of all public contracts and use of state funds.”

51. In his post of 18th March 2017, he cheekily repeated the reference to “bandit clan” and taunted: -

March 18, 2017

“ I have been commenting on politics since Andrew Gabriel was still dribbling in his mother’s lap, and have been referring to those in the business, professional and political fields who use access to public office to enrich themselves under questionable circumstances as a ‘bandit clan,’ yet for some reason, Andrew’s lawyer Michael Quamina, who has admitted to ‘closely monitoring’ my Facebook profile, sees the term bandit clan and either he or Gabriel assumes it to mean his family.

I think Morgan answers it succinctly ...”

“Actually No, My Post Wasn’t About You

But If the Shoe Fits, Feel Free To Lace That Bitch up wear it.

52. On the 22nd March in a post which was accompanied by a photograph which showed the claimant, the Prime Minister and others, he claimed that “members of the Syrian Community would want T & T to know that they are not responsible for the Rowley Government or the members of his cabal”. He once again made reference to financiers “raping the treasury.”

53. In a post published on April 2nd 2017 he alluded to “P.N.M financiers, and investors jamming him in court” and to his predicament having to fight “this jackass of a jackass in court for asking a question which the entire country is supposed to be asking”. A fairly lengthy post was published on April 4th 2017, I consider it necessary to produce a fairly long extract:

April 4, 2017

“And to Mr. PNM Investor Man, I getting information brudda...you have nine aliases?

You say I bringing your name into odium and disrepute, which of the nine? Which of the nine? Mr. PNM investor?

Which of your nine aliases, am I bringing into odium and disrepute?

You say I bring your company name into odium and disrepute, and you have twenty one company names registered?

Which company Mr. PNM investor man? Which one?

I look at company documents today. I tell you a company start up, capitalised...now this is a totally different ting, so let’s pause...and move forward...because I understand, this game that they playing now, is that you can say, if he say it, and it sound like is me he talkin’ bout, I could sue him, that’s what they say yuh know, that’s

what they say. Put a pause, put a space, let's talk about the price of bananas and apples and come back to dis.

Dis is about a company dat was capitalised for about two hundred thousand dollars. And in two years, was forty-four million, and two years after dat was two hundred and seventy nine million dollars. And dey don't do nuttin'. Dey don't sell nutin, dey don't buy nuttin, dey don't make nuttin, except contracts. Dey make contracts. With State money. Your grandchildren money.

Some could say dey doin you a favour, it could be messy trying to keep two hundred and seventy nine million dollars spread out all over the place. They've taken it for you and put it safely into their bank account. Some could say dat.

Some could say dat dat is civic mindedness and patriotism. We are securing your money and spending it wisely on ourselves. This is our reality. Trinidad and Tobago. Our reality.

A man send me a message today. I share these things on Facebook because I want to empower you, not because Phillip Edward Alexander, looking for a job, I keep tellin y'all I not. I not. I not looking for a job but I tellin Mr. PNM Investor man, and people like him, light candle, pray long prayers yuh know, hope and pray dat Phillip Edward Alexander doh ever see government power yuh know. Because yuh could run to Russia, we comin yuh know, and we not stopping till we get back we money. I promise yuh dat. I goin by Johnny O inheritors. Dey have three sky scrapers in Toronto brother, paid for by Trinidad money.

I, I, I going to Panama to pick up all de money dat d PNM under Eric Williams, take and build Panama City. I want to go for dat too.

Mr. PNM Investor man, I compiling yuh information. I may not be able to call it in the public space yet...But pray, I don't end up in d Senate. Pray I don't get d same parliamentary privilege dat Rowley use to wine on people for five years, because I will make yuh cry brudda, I promise yuh you will cry tears. Cry tears! Because yuh do a good job hiding yuh know. You're a master hide and seek player. I give yuh dat. An hundred points out of an hundred. Yuh brilliant at hide and seek. And yuh not de only one. Because I seein new names.

And these are the questions I am going to ask and I am going to ask them in the public space soon. The contracts that you are getting, to hand mailbox and to mow lawn, did you have to tender for them? Did you tender for those contracts? Did other companies provide tenders as well?

Who give you the contracts? Because you and that person have questions to answer.

Because at the end of the day, this is the money of the people of Trinidad and Tobago, and for those of you, who caught up in the bachannal, this morning, Krysis and the police, let me tell you what you not paying attention to.

This is yuh rell business, what I going to read for yuh now, because after that I done, because is bachannal time and I don't want to distract yuh, go take a wine, go take a jam, but hear dis.

54. The defendant's unrelenting campaign only came to an end when the subsequent publications were brought to the attention of the court, and when he was invited to give an undertaking which he did upon the advice of his counsel. I considered it necessary to include the above extracts because I believe that they reflect the state of mind of the Defendant. His aim was to cause the claimant to withdraw these proceedings. But an apology or an offer to settle was not within his contemplation. He chose instead to flaunt his bravado and to intensify his attack.

55. The Claimant was like other citizen was entitled to access the Court to seek redress. The Defendant's reaction to Mr Gabriel's exercise of his right to file this action in a sense reflected a disregard for the authority of the Court. Even if this was the first time he was being sued in a defamation action his response can be interpreted as an attempt to trifle with the process.

56. The Defendant has been unrepentant about publishing what remains unproven even to the end. The Defendant's closing statements insisted on his reliance on "truth". He continued to make scandalous allegations while somewhat casually admitting that he made a mistake when he made his first statement in the interview. He should have identified one entity HDC instead of T&TEC. The first "closing" statement submitted on 22nd January 2017 included these statements which again were critical to my assessment of the Defendant's state of mind: -

- (i) Madame Justice informed during the trial phase that this was not a place for political discussions and I respect that, but one cannot escape the overtly political nature of these proceedings;
- (ii) Both Mr. Gabriel and Mr. Quamina are agents of this PNM government that has decided to use the courts and court matters to silence public interest;

(iii) All of that said, the substantive matter still needs to be answered;

(iv) Madame Justice, according to All Law research, “truth is an absolute defense to a defamation lawsuit. If the statement that is the subject of the suit is true, and you can prove it, your attorney can move to have the plaintiff’s claim dismissed. No one is punished for speaking the truth, even if it is an ugly truth.”

57. In these proceedings Mr. Alexander never claimed to rely on the truth of his utterances – he did not rely on a plea of justification. He produced no statement of fact in his defence, no evidence in his witness statement to establish the truth of his several utterances about the Claimants. They remain ugly lies, and the law does provide for consequences. The second closing statement was as bad or worse.

58. I am mindful that the Defendant is not a lawyer. But a Defendant who is unrepresented cannot be allowed concessions which allow an abuse of the process of the court and that is what I believe Mr. Alexander attempted. If I were to simply ignore his behaviour throughout the proceedings and to put it to a lack of legal representation or indeed to simple ignorance of the niceties of the law of defamation, I would only have given the Defendant a platform to continue to make defamatory statements of the Claimant. Late in the day in the course of his cross examination Mr. Camacho somewhat cheekily asked Mr. Gabriel if he was willing to accept an apology. Given the Defendant’s insistence on the truth of his statements and his persistence in taunting the claimant and his lawyer, this enquiry seemed insincere and disrespectful of the claimant as well as the process.

59. For the above reasons, I consider an award of aggravated damages in the sum of two hundred thousand dollars (TT\$250,000.00) to be appropriate.

Disposition

60. (1) There shall be judgment for the Claimant.
- (2) The Defendant shall pay damages to the Claimant assessed as follows: -
- | | |
|--------------------|--------------|
| General Damages | \$525,000.00 |
| Aggravated Damages | \$250,000.00 |
- (3) The Defendant is to pay the Claimant's prescribed costs of this action.

Carol Gobin

Judge