

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain [Virtual Hearing]

Claim No. CV 2019-04498

BETWEEN

Stephen Young

Claimant

AND

Melena Simon O’Neil

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: 28 June 2022

Appearances:

Mr. Vivek Lakhan-Joseph and Mr. Craig Beepath, Attorneys-at-Law for the Claimant

Mr. Martin George, Ms. Sarah Lawrence and Ms. Keshavi Khorban, Attorneys-at-Law for the Defendant

JUDGMENT

A. Introduction

1. Stephen Young [“the Claimant”] is a contractor seeking damages for comments posted on Facebook by Melena Simon-O’Neil [“the Defendant”], a businessperson who had contracted his services to refurbish her hat store. The Facebook post

["FB post"], published on 5 November 2015 and its comment stream, included the following statements which the Claimant contends are defamatory:

a. "MEET STEPHEN YOUNG...

A CROOK MASQUERADING AS A CONTRACTOR"

b. "Mr. Young failed to complete the job and whatever he did he ensured he produced the poorest quality of work ever!"

c. "...some examples of his crooked ways!"

d. "All attempts to reach Mr. Young has failed. Prior to today he kept promising 'tomorrow' but never turned up"

e. "He is a stranger to the truth and lies like I never experienced before. His dishonesty is astonishing to say the least."

f. "He has made threats towards my husband and my family which now takes this to another level. But I am a child of God, walking with my sword and bible in hand."

g. "...help me deal with this crook."

h. "...Are you sure this man not on drugs??...".

2. The Claimant seeks special damages for alleged loss of business opportunities, general, aggravated and exemplary damages.
3. The Defence to the Claim is one of justification. The Defendant has pleaded in her Defence that the contents of her FB post are true and correct. Accordingly, they are justified and do not constitute defamation.

B. Issues

4. The main issues to be determined are:
 - a) Whether any of the statements in the Defendant's FB post published on 5 November 2015 are defensible on the ground of justification; and

- b) If any of the statements in the Defendant's FB post are not defensible on the ground of justification, what quantum of damages should the Court award to the Claimant.

C. Legal Principles

5. The **Libel and Defamation Act Chap 11:16** sets the parameters within which this Claim is to be determined by referring at **Section 2** to the laws of England. It states:

"No action for defamation shall be maintainable in any Court of justice in Trinidad and Tobago in respect of words spoken, except in those cases in which an action would be maintainable in respect of the same words in England."

6. **Halsbury's Laws of England Volume 32(2012)** defines an actionable libel as follows:

"511- A libel for which a claim will lie is a defamatory statement made or conveyed by written or printed words or in some other permanent form, published of and concerning the claimant, to a person other than the claimant."

7. In the case of **DRA & SA & Child A & Child B -v- Jenelle Burke CV 2016 – 02974**, Seepersad J considered whether a particular post on FB constituted a defamatory statement and stated the following at paragraph 29:

"Essentially a defamatory statement is one which tends to lower a person in the estimation of right thinking members of society and so cause him to be shunned or avoided or to be exposed to hatred, contempt or ridicule or which may disparage him in his office, trade, calling, profession or business. A publication will be defamatory if it substantially affects in an adverse manner the attitude which people adopt towards a Claimant or if it has a tendency to so do."

8. Of specific relevance to the FB post in the instant case, it is notable that comments published to others bringing into question a person's honesty are considered

prima facie as defamatory. The Claimant cites **Gatley on Libel and Slander, 13th Edn**, at paragraph 2.28, as follows:

“It has been held defamatory to publish of a person that he is a rogue and a rascal, a swindler or a sharper, a greedy sinecurist, a crook, a shyster, dishonest, a coward, a liar, someone who “rats” on promises, a paedophile, a hypocrite, a fanatic, a villain, a racist,...”.

9. A statement alleging dishonesty and criminal activity is a defamatory statement that is presumed to be untrue¹. However, a Defendant may avoid liability by proving that the statement is true. It is this defence of truth or ‘justification’ that the Defendant relies on in this case.

Justification Defence

10. The Judgment of Mohammed J in **Heidi Joseph v Ama Charles CV2016-02996**, cited by the Defendant, provides guidance on what the Court should consider when assessing evidence to determine whether a defence of justification is proven, as follows:

“39. Section 3 of the Libel and Defamation Act provides for the defence of justification as follows: “In any action for defamation or libel, the defendant may plead the truth of the matters charged by way of justification in the same manner as he might do in a like action in a Court in England and the plea shall be a sufficient answer in law to any such action; and if, on the issue joined on such plea, a verdict is given for the defendant, the defendant shall have final judgment and recover his costs of the suit.”

40. The requirements for making out a defence of justification are set out in Gatley on Libel and Slander at paragraph 11.9 as follows:

“...for the purposes of justification, if the defendant proves that “the main charge, or gist, of the libel” is true, he [need] not justify statement or comments

¹ Kodilinye, Commonwealth Caribbean Tort Law, Fifth Edition at pg 252

which do not add to the sting of the charge or introduce any matter by itself actionable.

It is sufficient if the substance of the libelous statement be justified, it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.”[Emphasis added]

11. To succeed with a justification defence, a Defendant must prove the meaning of the “sting” in the statements alleged to be defamatory and that the proven meaning is justified. In **Ramadhar v Ramadhar and others [2020] UKPC 7**, cited by the Claimant, the Privy Council explained that as Moosai JA pointed out in the Court of Appeal²:

*“50. ... where the defendant seeks to justify his having said that the claimant’s conduct is in some way unlawful or wrongful, the court must determine the meaning of his statement. There are three recognised levels of meaning, known as the Chase levels following the decision of the Court of Appeal in England and Wales in **Chase v News Group Newspapers [2002] EWCA Civ 1772; [2003] EMLR 11.***

*51. **Chase level 1** is the most serious level of meaning and it applies where the defendant’s statement meant that the claimant has actually committed the wrong. So, if he said that the claimant has committed fraud, **he will have to show that the claimant has indeed committed a fraud. Chase level 2** meaning applies where the defendant alleged only that he has reasonable grounds for suspecting that the claimant has committed a fraud. Then, to establish the truth of his statement, **he will have to show that reasonable grounds did in fact exist.** If, however, the meaning of what he said is merely that there are grounds for investigation, the meaning is Chase level 3 and he will simply have to*

² Dissenting Judgment in Civil Appeal No P-022 of 2016 at para 32

show that there are such grounds, as where an official investigation has been instituted.” [Emphasis added]

D. The Pleadings

The Claimant’s case

12. There is no dispute between the parties that, as pleaded by the Claimant, the genesis of this matter was on 2 October 2015. On that day, the Claimant, as a Director of Super Woofer Construction, provided a quotation to the Defendant for the refurbishment and renovation works of the Defendant’s store located at the ground floor of Auzonville Mall for the total sum of \$28,900.00. The quotation was for the following:

- a. The replacement of the old ceiling with a new ceiling and mudding;
- b. The replacement of the old lighting system with the new lighting to new location of lights;
- c. The replacement of the old countertops inclusive of changing of the boards, the draws, the cupboard doors, placing of glass and re-upholstering;
- d. The placement of glass in the walls;
- e. The replacement of boards on the walls with new boarding and the tiling of the store’s interior;
- f. The placing of moulding on the ceiling and at the bottom of all cupboards.

13. The Claimant revised the quotation to the sum of \$25,000.00 after the Defendant verbally indicated her inability to meet the sum as initially quoted. He alleges that he did so in an effort to build a working relationship with her. The Claimant and Defendant thereby entered into an oral contract to commence and complete the renovations in accordance with the agreed scope of works.

14. Shortly thereafter, the Claimant commenced the aforementioned scope of works on 2 October 2015 in accordance with the initial oral contract. The Claimant’s pleading is that he received a down payment of \$7,500.00 on 5 October 2015. According to the Claimant, as the project began to take form, the Defendant

proceeded to give fresh daily directives to perform additional works, which were not contemplated in the initial contract. There is no specific pleading by the Claimant as to when such daily directives were given concerning additional works.

15. The Claimant contends that the Defendant did not provide any further pictures, drawings or illustrations depicting the desired conceptualized designs nor were any sample materials and/or colour schemes provided at the time. In an effort to ensure the project was completed in accordance with the requisite timeline, the Claimant had no alternative but to undertake the additional works based on the oral directives.
16. On 18 October 2015, the Claimant accompanied by three of his employees attended the job site to complete the works. Mr. Kevin O'Neil, the Defendant's husband identified himself as an agent of the Defendant's business and highlighted some areas of work to be rectified.
17. The works were subsequently completed and the areas that Mr. O'Neil complained of were rectified, with the exception of the flooring, the hat rack and the storeroom, which were not agreed upon within the initial scope of works.
18. On 19 October 2015, the Claimant arranged to meet at the work site to receive payment of the balance of \$17,500.00 due upon the completion of the initial scope of works. To the Claimant's surprise, the Defendant was reluctant to pay the agreed sum, as the upholstery and hat rack were not completed. Instead, a payment in the sum of \$10,000.00 was made in breach of the oral contract.
19. The Claimant submitted photographs of the said hat rack and upholstery for the Defendant's review and approval. Upon reviewing the photographs, the Defendant was in disagreement with the designs proposed and instead provided photographs of the design envisioned. Upon hearing the Defendant's complaints, the Claimant contacted the suppliers of the hat rack and the upholstery to ensure

that they were designed and altered in accordance with the updated proposal of the Defendant.

20. On 23 October 2015, the Claimant returned to the job site to install the upholstery and hat rack. He met Mr. O'Neil and another male individual outside of the building. Mr. O'Neil refused the Claimant entry into the said premises and proceeded to hurl derogatory comments and threats towards him.
21. On 24 October 2015, in an attempt to resolve the matter, the Claimant sent a formal letter to the Defendant demanding the sum of \$7,500.00 as the balance owed for the initial works. He also claimed what he contends is a discounted figure of \$5,000.00 for the additional works. There was no response.
22. Subsequent to this, the Defendant made the FB post on 5 November 2015. It came to the Claimant's attention when he received several telephone calls about it. The Claimant does not name the persons who informed him of the post in his pleadings.
23. In highlighting his stature as a person whose upstanding reputation the Defendant damaged, the Claimant pleads that he is the Director of two contracting companies, namely Super Woofer Construction that contracted with the Defendant and Carico Marketing Company Limited. He contends that he is a reputable contractor and as a result his companies, secured several high-profile contracts with the Government of Trinidad and Tobago. The Claimant pleads that he is also member of a political party (the Congress of the People), which around the time of his contract with the Defendant formed part of the Government of Trinidad and Tobago. Further, the Claimant says he is a member of the Judiciary of Trinidad and Tobago based on his role as a Justice of the Peace for the Western Division.
24. The Claimant complains that upon publishing the FB post, the Defendant tagged 13 of her Facebook "friends" and/or followers including one Michael Broomes,

implicitly giving the 13 friends and/or followers permission to forward the publication to third parties. It was highlighted in the Statement of Case that the FB post contained the following comments from the Defendant's Facebook "friends":

Miss Lashley – "Stephen you did wrong and you have been very dishonest in the way this job was done. I have seen work that you called complete and it is a total joke. Any apprentice could have done a better job. I never expected this from you and you need to do the right thing."

Imani Bre – "Good point about being an addict... 'Normal folks' don't behave like this..."

Imani Bre - "Do you want to make this post 'public' so that we can just repost? #Sigh"

25. Information gleaned from the pleadings and testimony at trial clarifies that the commenting Facebook friend named Miss Lashley is the Defendant's employee who introduced the Claimant as a suitable contractor for her refurbishment job. The name of commenter Imani Bre, is an Facebook pseudonym for Dr. Faith B Israel, a medical doctor and current politician holding public office.

26. The Claimant alleges that the Defendant failed to remove and/or delete and/or edit these comments posted by third-party users as soon as reasonably practicable to do so. He further contends that the Defendant's further addition of comments and replies in the comment streamed under her FB post indicate her acknowledgement and/or acceptance and/or approval of the contents of the third party comments.

27. The Claimant points out in his Statement of Case that the FB post named him, displayed his picture, and referred to him by the office and/or position he held at that time with the COP Political Party, along with his affiliation with Super Woofer Construction and his role as a former URP programme manager. The FB post

therefore readily identifies the Claimant and the words posted meant and were understood to mean that:

- a. The Claimant has acted in a manner, which is improper and unlawful, in the performance of his contractual obligations owed to the Defendant.
- b. The Claimant was deceitful in inducing the Defendant to enter into a contract with him for the performance of works he never intended upon undertaking and/or completing and/or performing satisfactorily.
- c. The Claimant collected monies from the Defendant without any intention to complete the works contracted and/or with the intention to use materials of the lowest quality in completing such works in order to obtain the highest possible profit margin.
- d. The Claimant abandoned the job site before the works described in the initial scope of works were completed and the works, which he performed, were purposely at the lowest standards.
- e. The Claimant was overpaid for works performed by him under the contract.
- f. The Claimant has given assurance and/or promises to the Defendant that the said works would be completed, knowing that he had no intention to complete such.
- g. The Claimant's demeanour and/or actions are that of someone who is affiliated with the use of illicit drugs and/or someone who engages in illicit activities and/or one which appears to be a criminal under the purview of the law.
- h. The Claimant when confronted about an issue and/or is engaged in an argument pertaining to his conduct and/or discretions becomes angered and/or exasperated and he resorts to the threat of violence and/or engages in violent behaviour.
- i. The Claimant acted in an improper manner in the performance of his duties and obligations owed to his clients and should not be entrusted to and/or contracted whatsoever for the performance of any construction and/or renovation works.

- j. The Claimant has committed acts of impropriety and misconduct and engaged in behaviour which is contradictory to the customs and practices of fair and/or reasonable contractor and/or businessman.
- k. The Claimant is a crook.
- l. The Claimant engages in fraudulent and/or dishonest activities and should not be trusted.
- m. The Claimant is dishonest.

28. The Claimant claims that, because of the publication of the defamatory FB post, he was gravely injured in his personal and professional capacities and in his role as a member of the Congress of the People. Another result pleaded by the Claimant is that many potential clients seeking to acquire the services of himself, Super Woofer Construction and Carico Marketing Company Limited shunned and/or blacklisted them. The Claimant contends that he has been subjected to grave ridicule and hatred by fellow contractors and other member of the public who have become aware of the FB post.

29. As to special damages, the Claimant pleads that he has suffered consequential loss of three tenders, as follows:

- a. Tender 1 for the renovation and upgrade of a Bar and House belonging to one Curtis Gayadeen for the total sum of \$444,000.00;
- b. Tender 2 to undertake the restoration and rejuvenation of the RC Parish of Holy Cross Church for the total sum of \$101,000.00; and
- c. Tender 3 to perform renovation works on East Side Plaza located at 32 Charlotte Street, Port-of-Spain for the total sum of \$1,933,816.50.
- d. TOTAL alleged loss - Two Million Four Hundred and Seventy-Eight Thousand Eight Hundred and Sixteen Dollars and Fifty Cents (\$2,478,816.50).

The Defendant's case

30. The Defendant admits that she made the FB post but not that it was defamatory. She contends that the FB post was based on the Claimant's dishonesty and his proclivity to leave tasks unfinished or to produce low quality work and claim full payment thereof. Therefore, her statements in the FB post are true and correct.
31. It is apparent that the Defendant's case as to justification is at **Chase** level 1 regarding the allegations of dishonesty against the Claimant. Accordingly, her case is that she can prove the dishonesty and criminal nature of the Claimant's actions that led to her post.
32. By the pleaded defence of justification, the Defendant contends that her post does not constitute Defamation. It is the Defendant's position that she made the FB post because of the Claimant's unprofessionalism, his continued pattern of dishonesty and his empty promises to complete works in a timely manner. The Defendant contends that the Claimant promised to complete the works in four days. However, up to twenty-two days after starting the works, the works were not completed.
33. As it relates to the comment on the post where the Defendant stated "*...Are you sure this man is not on drugs?*", the Defendant avers that this question contains no defamatory words. Instead, according to the Defendant, it represented sincere and genuine enquiry and concern for the Claimant's well-being.
34. The Defendant's version of what transpired between her and the Claimant, which led to her making the FB post, differs from that of the Claimant. She contends that, although the Claimant provided a quotation, there were several items omitted. The parties then agreed to those items by the oral agreement.
35. The Defendant agrees that the parties entered into an oral contract on 2 October 2015. The Defendant avers that the Claimant made a representation that the works would be completed in four days, which would have brought the works to

an end on or about Monday 5 October 2015. [Alternately, if, as later stated by the Claimant in his Witness Statement, the four days started from the date of the down payment on 5 October 2015, then the expected completion date was 8 October 2015.]

36. The Defendant avers that on 2 October 2015, she paid the Claimant a cheque for \$7,500.00, which was 30% of the consideration for the contract. The Claimant refused to accept the cheque and insisted on cash payment. The Defendant states that she complied with this request, however, highlighted that the Claimant gave to her a Petty Cash Voucher in lieu of a receipt. The Defendant states that she refused to accept the voucher, but in good faith gave the Claimant the payment on the ground that he would bring a receipt to her later that day.
37. The Defendant indicated that she was shocked when the Claimant provided her with a receipt for the sum of \$7,000.00. This is the receipt dated 5 October 2010 attached to the Defence. The Claimant has indicated that, after much denial, the Claimant eventually admitted that he received the sum of \$7,500.00 but never provided her with a corrected receipt.
38. The Defendant denies that any directives to perform additional works were given to the Claimant. Instead, the Defendant was constrained to critique the works done by the Claimant, as the works were sub-par and did not meet the high standards which were agreed to by the Claimant and the Defendant.
39. One area of concern regarding the standard of work was that the hat rack, produced by the Claimant, bore no resemblance to the design in the picture shown to the Claimant on 2 October 2015. By this pleading, the Defendant fixes the time of discussing the omitted terms as 2 October 2015. The Defendant attached to her pleadings a photograph of the design agreed to by the parties and a photograph of the hat rack constructed by the Claimant.

40. The Defendant claims she had to seek the services of an alternate person to construct the hat rack for her store because it was clear that the Claimant was incompetent to do so and misrepresented himself as being capable to provide the service. The Defendant affixed to her Defence a photograph of the hat rack prepared by this alternate person and the receipt for \$5,800.00 paid for his work.
41. The Defendant avers that pictures, hand drawn sketches and illustrations of the desired concept and design were shown to the Claimant on 2 October 2015 and throughout the time when the Claimant was working at the store.
42. The Defendant says the parties contemplated the works in relation to the flooring, the hat rack and the storeroom at the conception of the Agreement and before the start of the works. The Defendant underscores in her pleadings that the Claimant's pattern of dishonesty is exemplified by the fact that his Statement of Case, at paragraph 4 item (v), which sets out the agreed refurbishment and renovation works, expressly states that "The replacement of boards on the walls with new boarding and the tiling of the store's interior". This goes against his contention that flooring was not part of the works agreed in the oral contract.
43. The Defendant explains in her pleadings that she refused to comply with the Claimant's demand for the final payment because the works were not completed. Furthermore, the works that the Claimant purported were completed, were not properly completed to an acceptable or competent standard.
44. The Defendant avers that on 19 October 2015, when the Claimant came for payment, there were several tasks outstanding, which were to be completed, namely:
- Installation of the circular hat racks in the showroom;
 - Installation of lightbulbs, as the Claimant did not complete the said installation;
 - The re-upholstering of a counter to a professional standard;

- Replacement of a faulty plug for a track light system;
- Installation of another track light system;
- Rectification of the design of the cupboard on the main wall;
- An addition of moulding to frame the wall behind the counter;
- Installation of cabinet lighting;
- Installation of another track light system in the front showroom window;
- Completion of painting of the wall area above the cupboards;
- Refurbishment of the damaged flooring boards.

45. According to the Defendant, she emailed a letter to the Claimant on the same day, 19 October 2015, expressing this dissatisfaction with the quality of his work and delays in delivery. In light of all the outstanding tasks, the Defendant was not prepared on 19 October 2015 to pay the outstanding balance of \$17,500.00 until the works were completed, as it was agreed that this sum was to be paid upon completion of the works. However, the Defendant's husband paid to the Claimant, without the Defendant's consent, the sum of \$10,000.00 on the Claimant's promise that the works would be completed by 20 October 2015.

46. On 23 October 2015, the Defendant contends that she sent to the Claimant a second letter expressing her dissatisfaction with his conduct in carrying out the works. On this said day, the Claimant showed up at the store purporting to have come to install the upholstery and hat rack. However, he was informed that his services were no longer required.

47. When the Defendant's husband enquired about the outstanding works, the Claimant denied that there were any outstanding works. The Defendant avers that the Claimant made several threats to the Defendant's husband causing him to make a police report on the same day. The Defendant contends that efforts to obtain a copy of a receipt for the police report have proven futile.

48. The following day the Defendant received the letter, dated 24 October 2015, from the Claimant whereby he called upon her to pay the balance of \$7,500.00 and a further sum of \$5,000.00 for the additional works. The Defendant did not respond. It was after these events that the Defendant made her FB post on 5 November 2015.

The Claimant's Reply

49. In his pleadings in Reply, the Claimant averred that the purported delays in completing the works were due to the Defendant approaching the Claimant to undertake additional works, which were not contemplated within the description of the works originally agreed between the parties.

50. He also sought to clear up the issue regarding the receipt for \$7,000.00, when he received \$7,500.00 as the initial down payment by attaching a receipt for \$7,500.00.

51. Regarding the alleged letters of complaint sent by the Defendant on 19 and 23 October 2015, the Defendant says he never received them. Their contents were foreign to him prior to being served with the Defendant's Defence.

52. The Claimant responded to the Defendant's allegations about his threatening behaviour on 23 October 2015, denying same. He reiterated that the Defendant's husband was aggressive to him on that day. He supports that contention with a copy of a receipt for a police report he made about it and underscores that the Defendant produced no such receipt to prove a report allegedly made by her husband.

E. Analysis of the Evidence

53. In assessing the credibility of the witnesses on either side, consideration was given not merely to their demeanour but to factors that are more tangible. These factors

include deviations from the pleadings, which the Court of Appeal in **Anino Garcia**³ underscored ought not to be overlooked.

54. The Claimant's witnesses were himself and Mr. Willie Andrews, one of the employees of his company Super Woofer Construction. The Defendant's supporting witness was her husband.

55. The trial commenced with the determination of filed evidential objections to the witness statements filed by the parties. The Defendant's credibility was more tarnished in this exercise than that of the Claimant. Large extracts of her witness statements had to be struck out as inadmissible, having been raised for the first time in her Witness Statements. This gave the impression of the Defendant seeking to embellish her version of events.

56. On the other hand, the Court upheld less extensive objections to the Claimant's evidence. Accordingly, the Claimant appeared intent on tendering mainly such evidence as was consistent with his pleaded case. However, on a careful review of his Witness Statement, it is clear that he also belatedly added information that was missing from his pleaded case.

57. Notably, at paragraphs 19 and 22 of his Witness Statement, he makes the new claim that the Defendant assured him she would pay for the additional costs incurred for additional works. Additionally at paragraph 28, he asserts that the date when he received instructions to fabricate a hat rack was 14 October 2015. Previously in his pleadings he had not provided information on the specific date when the Claimant requested additional works.

58. Finally, whereas in his pleaded case the Claimant did not name or explain his relationship with any person who brought the FB post to his attention, he supplied

³ **Attorney General of Trinidad and Tobago v Anino Garcia** Civil Appeal No. 86 of 2011 at para 31

those details in his Witness Statement. They included a named employee, Jason George, two Police Officers, friends and the Claimant's 2 sons.

59. None of the persons belatedly named or described in the Claimant's Witness Statement were called as his witnesses. The Witness Statement of the sole supporting witness, Willie Andrews, indicated that he saw the FB post. However, Mr. Andrews admitted under cross-examination, that he was not familiar with Face Book and had not seen the FB post.

60. Overall, the Claimant was somewhat discredited by the fact that he added new information to his Witness Statement. These additions allowed for adverse inferences to be drawn as the Claimant failed to call relevant witnesses to prove the additional information.

Is the Defendant's FB post defensible on the ground of justification?

61. Based on the written evidence-in-chief, the parties' credibility was evenly balanced in terms of the probability of each version of the events leading to the FB post. The truthfulness of the divergent accounts is relevant to determining whether the FB post is defensible on the ground of justification.

62. The balance tipped in the Defendant's favour after all witnesses were cross-examined. This was so to the extent that the Court now finds the Defendant's account is truthful. More specifically, the Court's finding is that the scope of works to be completed by the Claimant included what he refers to as "additional works" from inception.

63. The quotation, presented by the Claimant on 2 October 2015, did not include the full details of the works, the time to complete or the agreed cost. Thereafter, the parties agreed orally to all the works including the hat rack, which was part of the shelving to be completed by the Claimant. The job was to take four days. This was all agreed to orally on 2 October 2015.

64. Thereafter, on the same day the Defendant signed, expressly agreeing to a revised price. There was no “existing scope of works” set out in the letter signed by the Defendant. Accordingly, the Court accepts as a fact that the scope of works was only generally stated in the quotation presented by the Claimant but more fully agreed to in the oral contract between the parties. The down payment was settled on 5 October 2015 and thereafter, the Claimant commenced work but failed to complete the job within the expected time or at a standard that was acceptable to the Claimant.

65. Some aspects of the cross-examination of the Claimant that shed doubt on his credibility, thereby allowing for the above-mentioned findings, were highlighted in the Defendant’s closing submissions. The extracts considered are as follows:

- a. “The Claimant when cross-examined, claimed that his “losses” from the reduction of persons he saw per day as a Justice of the Peace included “Financial Losses”. When confronted thereafter, with the Guidelines for Justices of the Peace which makes it pellucid that they are not to charge for their services nor make a profit from the post, he then changed his story to try to distance himself from any claim of Financial Losses as a Justice of the Peace. ...
- b. At paragraph 4 item (v) of his Statement of Case which he signed as being true and correct, he refers to “.....and the tiling of the store’s interior” as a matter falling under the original scope of works yet, at his paragraph 8 of the same document, he indicated that flooring was not within the original agreed scope of works. ...
- c. When the Claimant was asked about the cost of the items listed as the purported additional works at paragraph 22 of his witness statement, the Claimant indicated that he never charged anything additional for the repair and replacing of the floor tiles in the changing room and the fabricating of the hat rack. This contradicts the Claimant’s own position, where the Claimant has always maintained since the inception of this matter, that the repair and replacing of the floor tiles in the changing room and the fabricating of the hat rack were additional items. If so, why would he not

charge anything additional for them? The only reasonable explanation one can gather from this is that the position posited by the Defendant is true and correct in that these items were originally contemplated within the original quotation and the revised quotation. ...

- d. The Claimant could not even provide any explanation to this Honourable Court as to how he came up with the total figure he was now allegedly claiming for these purported additional works. The fact that the Claimant was unable to provide any proof of any itemization of the costs in relation to these items is of stark contrast when compared to the manner in which the Claimant dealt with the items which he has purported to be the scope of the initial works as set out in the exhibit "S.Y.1" to his witness statement. It must be noted that this is also very different from the manner in which the Claimant provided detailed breakdowns in relation to cost of items to Curtis Gayadeen, the RC Parish of Holy Cross Church and East Side Plaza in the documents exhibited as "S.Y. 6", "S.Y. 7" and "S.Y.8" respectively to his witness statement. ...
- e. The Claimant said "the additional works" were financed using monies from his pocket. This is despite the fact that at the time he claimed, the Defendant was owing him money on the original works. When pressed under cross-examination about bills and receipts to evidence these alleged monies he spent out of his pocket, the Claimant could point to no such evidence before the Court. ...
- f. The Claimant revealed during his cross-examination that he had not given any time frame for the purported additional works but said this is not the way he usually does his contracts. ...
- g. The fact that the Claimant was alluding that he undertook these additional works despite having not agreed upon the costs in relation to same, then spent his own money and had no time frame to complete these works, strongly calls into question the truthfulness of these statements and strongly suggests that it cannot be the truth that there were in reality any additional works. ...

- h. Between the Claimant and his Witness, they could not even get their stories straight as to whether the hat rack was completed or not and the Claimant in his answers in cross-examination, contradicted his own pleadings in this regard. ...
- i. During cross-examination, he denied that he had collected the completed hat rack on 23 October 2015, then he was pointed to paragraph 34 where he himself stated that he “did collect the completed hat rack”. ...
- j. The Claimant agreed that he completed all the works except “the hat rack” and he added that he was also unable to complete upholstery. Thus, it is clear that the Claimant did not complete the job. ...

66. On the other hand, the Defendant and her husband gave cogent and compelling testimony under cross-examination. They convinced the Court of their account of the events leading to dis-satisfaction with the service provided and lack of honesty of the Claimant, which the Defendant emphatically expressed in her FB post. Persuasive aspects of the Defendant’s evidence in this regard included:

- a. the documentary evidence of photographs of the unsatisfactory work,
- b. the un-contradicted fact that they complained about the quality of the work,
- c. the Defendant’s contention that she emailed letters of complaint to the Claimant on 19 and 23 October 2015, and
- d. Documented proof that another person had to be paid to complete the works.

67. In addition to the foregoing, the Defendant highlighted in submissions that there are actions of the Claimant after the publication of her FB post which provide further proof that her characterisation of him as dishonest was justified. More specifically, the Defendant contends that the Claimant’s responses under cross-examination are actions that prove he is dishonest.

68. One such cross-examination response, alleged by the Defendant to prove dishonesty and untrustworthiness, was the Claimant’s reference to himself as a

member of the Judiciary in his 7 January 2021 Witness Statement. According to the Defendant, the Claimant admitted under cross-examination that his status as a Justice of the Peace did not amount to being a member of the Judiciary. Another such response was the alleged feigned ignorance by the Claimant under cross-examination of the statutory requirements for Value Added Tax when confronted with quotations for contract work that did not meet the requirements.

69. The submission by the Defendant on these responses providing further proof of the Claimant's dishonesty long after the facts which caused her to make those allegations against him in her FB post, is not persuasive. There is authority that, in some circumstances, a Defendant may include in their pleadings particulars of future facts relevant to a justification Defence. However, those circumstances are quite limited. The limitations are addressed in **Chase v News Group Newspapers Ltd [2002] All ER (D) 20**, as follows:

*"53. There has for a long time been a rule that if a publication contains general aspersions on a claimant's character, a plea of justification may include reliance on subsequent events **if they happen within a reasonable time from the date of publication** (see *Maisel v Financial Times Ltd [1915] 3 KB 336*). This rule was vividly restated by Lord Denning MR in *Cohen v Daily Telegraph Ltd [1968] 1 WLR 916*, 919F-G:*

"... if a libel accuses a man of being a 'scoundrel', the particulars of justification can include facts which show him to be a scoundrel, whether they occurred before or after the publication."

*54. As Pickford LJ observed in *Maisel* at p340, however, the question whether it is admissible to rely on subsequent events in support of a plea of justification must depend on the nature of the libel and also on the nature of the subsequent acts. In *Bennett v News Group Newspapers Ltd [2002] EMLR 860* ... After referring to Lord Denning MR's dictum in *Cohen*, Robert Walker LJ said that Lord Denning went no further than to note that **it might be proper to include post-publication***

facts in particulars of justification. Whether it is proper must depend on the facts of the particular case. A little later, he said:

*“In our judgment it cannot be right, in relation to 'sufficient grounds' ... to allow particulars of events since the date of publication. **The sufficiency of the grounds must be assessed on material available at that date.**” [Emphasis Added]*

70. In the instant case, the future facts of allegedly dishonest statements about a Judiciary position and VAT compliance in the Claimant’s written and oral evidence bear no relation to the substance of the defamatory comments complained about. They are new allegations of dishonesty based on actions too far removed from the incidents that led to the FB post.

71. These future fact allegations are not relevant to a finding that the defence of justification in having alleged dishonesty in 2015 has been proven. What must be proven as justified must relate to the information based on which the Claimant was felt to be dishonest and untrustworthy in 2015. However, as aforementioned, the Claimant’s responses under cross-examination are relevant to assessing his credibility in deciding whether to accept his version of events vis-a-vis that of the Defendant.

72. The Defendant explained, under cross-examination, that the persons she tagged to her FB post were friends, employees and family members in her “inner circle”. When pressed as to the reasons for the post, she explained that she wanted those in her inner circle to know what was happening with her.

73. She felt the Claimant was generally dishonest and she wanted her loved ones to be warned, not just about the poor job work but the dishonesty. It was not just the incomplete state of the job but also the duplicity of the Claimant saying certain works were not part of the scope and taking money to do them. She said, “I was deceived.”

74. The Defendant further explained she also felt her safety was threatened and wanted people to know in case anything happened to her. This aspect of her case was less convincing. On a balance of probabilities, her failure to disclose documented proof of a police report which she contends her husband made concerning the alleged altercation, whereas the Claimant disclosed a receipt for his police report, renders the Claimant's account more credible. Additionally, the Claimant's account is corroborated by that of his witness Mr. Willie Andrews.

75. The Defendant's explanation of her allegation in the FB post about the Claimant "on drugs" was even less persuasive than the alleged factual basis for the allegations of threats published in the FB post. No justification was proven for this comment despite the Defendant saying she has the experience as a professional to know when someone is on drugs.

76. There is no merit to the Defendant's contention that the words are not defamatory. They clearly connote criminal activity on the part of the Claimant. This is at least a **Chase** level 2 meaning, which required the Defendant to prove that reasonable grounds, in fact, existed for the allegation. The tone and publicity of the comment on drugs in the FB post do not support that the comment was based on reasonable grounds derived from legitimate knowledge of a medical issue concerning the Claimant or any understanding or concern.

77. In all the circumstances, the Claimant has succeeded in proving only that parts of the FB post alleging his drug use and threatening behaviour were defamatory.

F. Assessment of Damages

78. In arriving at an appropriate award of damages for defamation, a court usually considers the following six factors:

- I. Gravity of the allegation (injury to personal integrity, professional reputation, honour, courage, loyalty and the core attributes of a person's personality);

- II. Scale of publication (extent of publication);
- III. Extent to which readers believed the words to be true;
- IV. Impact on claimant's feelings, reputation or career;
- V. Aggravating factors; and
- VI. Mitigating factors.

79. In ***Lasana Liburn -v- Gordon Pierre CV 2016 – 02398***, the Honourable Master Alexander noted that:

In law, libel is actionable per se so that no evidence of damage is required to get compensation. That compensation would usually be in a nominal amount. Thus, there would be no need to prove reputational or actual damage or loss was suffered to get such nominal damages. On the other hand, if a claimant wanted to receive substantial damages, he must provide evidence of his injury or loss.⁴

Gravity of the Allegation

80. The Defendant insinuated that the Claimant may have been on drugs, and that he used threatening behaviour towards the Defendants husband. The Court notes the seriousness of those allegations.

Scale of Publication

81. The comments were posted on FB. Thirteen of the Defendants friends were tagged in the post.

Extent to which the readers believed the words to be true

82. The evidence suggests that at least two persons believed the Defendant's words to be true. Miss Lashley believed that the Claimant had produced shoddy work. However, the Court found that that aspect of the Defendant's comments was not

⁴ Lasana Liburn -v- Gordon Pierre CV 2016 – 02398, paragraph 8.

defamatory and thus this would not impact the award for damages. The comments of Imani Bri, however, concerned the drug use allegation and thus will be considered in arriving at a suitable figure.

Impact on Claimant's feelings, reputation and career

83. It is clear that the Claimant was deeply aggrieved by the Defendant's comments regarding drug use and threatening behaviour. His reputation would also have been impacted, however, he did not provide sufficient evidence regarding the impact on his reputation. The Claimant also failed to provide sufficient evidence of the impact of the comments on his career.

Aggravating Factors and Mitigating Factors

84. The Court finds no evidence concerning aggravating and mitigating factors in this matter.

The Award

85. As to the quantum of damages, the Claimant failed to prove either special damages resulting from the publication or wide enough circulation of the FB post to justify a significant award. He failed to prove sustained loss as a result of the FB post. The Court notes that in libel actions, the claimant must provide evidence of loss and damage to receive substantial damages. Failure to do so will result in a claimant only receiving nominal damages. In this matter, the evidence provided by the Claimant to prove such loss was wholly unsatisfactory. As such, only nominal damages will be awarded in the circumstances.

86. In arriving at a suitable award, the Court considered the following cases:

- ***Heidi Joseph v Ama Charles CV2016-0299*** - In that matter the claimant had published the following words on defendant's FB page and on the Trinidad and Tobago Prisons Service FB page, "trying to get on to Heidi Joseph she left her kids in the road at my home and I am unable to contact her. Anyone with information or who can relay the message please assist asap?? Beyond the Tape Ian Alleyne The TV6 News." The court was of the view that "the ordinary, reasonable

person reading this posting would have concluded that the claimant was an irresponsible mother for leaving her children by the road unsupervised in front of the house of a third party whom she did not know and that she was not fit to be a parent.” The Court was also of the view that the words suggested that the claimant had committed a criminal act. The claimant was awarded the sum of \$75,000.00. This did not include aggravated damages. Delivered June 2018.

- ***Gita Sakal v Michael Carballo CV 2009- 02468*** - in this case the defamatory words imputed were that the claimant had forged the defendant’s signature onto a letter. In arriving at a suitable award, the court was of the view, that the defamation in the context of all the circumstances would not have matched the case of ***Panday v Gordon***⁵ or the ***Rahael*** case. The claimant was not aware, at the time of the publication, of the prominence of these other persons in public life. The claimant was awarded the sum of \$50,000.00 as general damages. The Court did not consider it a case suitable for aggravated or exemplary damages. Delivered November 2012.
- ***Carl Tang v Charlene Modeste CV2010-03657*** - in arriving at a suitable award, the Court considered, *inter alia*, that the spread of the “libel was not broad-based in terms of the general population but was contained mainly within his professional circle at the Trinity College”; that the “evidence was threadbare and imprecise as to the impact of the libel on his public life and reputation”; and “that given the nature of the allegations, the libel presumably would have done some damage to his reputation.” The claimant was awarded the sum of \$18,000.00. Delivered March 2013.

87. In my view, an award closer to the one made in the ***Carl Tang*** matter is more suitable for this case, for the reasons already stated regarding the extent of the evidence before the Court. The Court also takes note that the ***Carl Tang*** case has some vintage to it. In that regard, I award the Claimant nominal damages in the sum of \$25,000.00.

G. Decision

88. The Claimant succeeds in part. The FB post qualifies as a publication for purposes of liability in defamation but only a small part of it was actually defamatory.

⁵ [2005] UKPC 36

89. The Defendant has established a good Defence of justification regarding almost the entire FB post. This is so in that she has proven the factual basis for the conclusion expressed in her FB post that the Claimant is dishonest and untrustworthy, vis-a-vis his dealings with her as a contractor.

90. However, the Defendant failed to establish any justification for her published allegations that the Claimant may be on drugs. She also failed to prove reasonable grounds for publicly alleging that he was threatening violence on 23 October 2015.

91. The Claimant, having only partially succeeded in the Claim, will not be awarded costs on the full Claim. On the other hand, the Defendant has not fully succeeded in defending this Claim. Additionally, her conduct in failing to respond to the Claimant's letter dated 24 October 2015, along with her failure to follow pre-action protocol procedures that may have resolved the matter without litigation, are taken into account in determining that she is to pay part of the costs of the Claim.

92. IT IS HEREBY ORDERED:

- a. Judgment for the Claimant having established in part the defamation alleged.
- b. The Defendant is to pay the Claimant nominal damages in the amount of \$25,000.00 plus interest at 2.5% from 4 November 2019.
- c. The Defendant is to pay to the Claimant 25% of the costs of the Claim on the prescribed basis.

.....

Eleanor Joye Donaldson-Honeywell

Judge