THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2016-02974

BETWEEN

DRA

1st Claimant

And

SA

2nd Claimant

And

CHILD A

3rd Claimant

And

CHILD B

4th Claimant

AND

JENELLE BURKE

Defendant

Before the Honourable Mr Justice Frank Seepersad

Appearances

1. Mr Glen Bhagwansingh for the Claimants.
2. Mr Adrian Thompson for the Defendant.

Date of Delivery: 5th February, 2018.

DECISION

Overview

1. The cause of action herein is premised in libel as a result of certain statements that the Defendant allegedly posted on social media about the Claimants. This matter is unique and important in that it raises for the first time in this jurisdiction, issues which relate to liability for publications via social media, namely Facebook.

2. From the onset it is important to note that we are legislatively ill-equipped to deal with issues which arise for determination in matters such as this one, as our laws have not been adequately updated to deal with the social media reality which now exists. 19th century laws as they relate to publication simply cannot regulate life in the 21st century.

Procedural Point

3. An oral application was made at the trial by the Defendant for a relief from sanctions for failing to comply with the Court's direction to file witness statements and for the trial to be adjourned. The Court noted that although the matter had been fixed for trial, since October 2017 no formal application for relief from sanctions was filed. This fact notwithstanding, the Court proceeded to address its mind as to whether or not a relief from sanctions should be granted in accordance with Part 26.7 of the Civil Proceedings Rules 1998 (as amended) (CPR). The threshold requirements[1] set out therein must be satisfied.

[1] The rule provides:
"26.7 (1) An application for relief from any sanction imposed for a failure to comply with any rule, court order or direction must be made promptly.
(2) An application for relief must be supported by evidence.
(3) The court may grant relief only if it is satisfied that—
(a) the failure to comply was not intentional;
(b) there is a good explanation for the breach; and
(c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
(4) In considering whether to grant relief, the court must have regard to—
(a) the interests of the administration of justice;
(b) whether the failure to comply was due to the party or his attorney;
(c) whether the failure to comply has been or can be remedied within a reasonable time; and
(d) whether the trial date or any likely trial date can still be met if relief is granted.
(5) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown."

Jamadar JA in **Trincan Oil Limited v Martin Civ App No. 65 of 2009** summarised the interpretation of the said rule as follows:

> "13. The rule is properly to be understood as follows. Rules 26.7 (1) and (2) mandate that an application for relief from sanctions must be made promptly and supported by evidence. Rules 26.7 (3) and (4) are distinct. Rule 26.7 (3) prescribes three conditions precedent that must all be satisfied before the exercise of any true discretion arises. A court is precluded from granting relief unless all of these three conditions are satisfied. Rule 26.7 (4) states four factors that the court must have regard to in considering whether to exercise the discretion granted under Rule 26.7 (3). Consideration of these factors does not arise if the threshold pre- conditions at 26.7 (3) are not satisfied." [Emphasis original]

4. Having applied this interpretation to the circumstances as advanced by the Defendant, the Court concluded that the threshold was not met for the Court to exercise its discretion with respect to granting relief from sanctions. The application was not made promptly and was not in writing. Several months elapsed since the deadline for the filing of said witness statements and no application was made when the Court convened for the PTR. The application was not supported by any substantial evidence which spoke to the reasons behind the delay. In addition the Defendant did not advance a plausible explanation as to why there was a failure to comply having full knowledge of the Court's order. Accordingly, the Defendant's application was denied and the trial was proceeded with.

Background

5. The 1st and 2nd named Claimants are married. The 3rd named Claimant is their minor daughter and the 4th named Claimant is the 2nd named Claimant's son from a previous relationship.
6. The Claimants and the Defendant are next door neighbours. At one point the Defendant was in a relationship with the 2nd named Claimant's brother and the ladies shared a close relationship.

Claimant's position

7. In or around the year 2014, the relationship between the Claimants and the Defendant became strained. One reported incident was that when the 1st Claimant began digging a trench for the construction of their home, the Defendant used obscene language and hurled objects toward the 1st Claimant and the workers carrying out the construction works.

8. As time went on, the verbal assaults persisted whereby the Defendant would call the 2nd Claimant a whore who makes 'fares', the 1st Claimant a 'raperman' and accused the 1st Claimant of having an incestuous sexual relationship with the 3rd and 4th Claimants.

9. In February, 2016 the Claimants became aware of certain posts made on Facebook under the profile 'Jenelle Burke' which is an account that the Defendant acknowledged belonged to her. The Claimants' allege that these posts[2] contained defamatory accusations which have sullied their reputations, thereby causing them emotional pain and anguish.

Defendant's position

10. The Defendant denied that she had anything to do with the said posts and at paragraph 2 of her Defence pleaded as follows:

> "The Defendant admits paragraph 2 of the Statement of Case. The Defendant denies that she wrote and/or published and/or posted the alleged defamatory words as set out in paragraphs 4 and 5 of the Statement of Case and avers that:
>
> a. In or around the month of November, 2010, Steven Bachan, Simon Bachan and [**CHILD B**], the Fourth Named Defendant, and persons unknown created and set up the Facebook page bearing the Defendant's name and photograph. Steven Bachan and Simon Bachan are the sons of the Defendant. All of the aforementioned had unlimited access to the Defendant's computer and the said Facebook page at the time.
> b. From the moment of the creation of the said Facebook page to the month of February, 2016 (the material time) all of these persons continued to have access to the Defendant's computer and the said Facebook page.

[2] Entered into evidence and marked as court exhibits C.E 1-5

c. On or around the 24th day of February, 2016 the Defendant was informed by the aforementioned Steven Bachan and Simon Bachan that the said Facebook postings (as referred to in paragraphs 5 and 6 of the Statement of Case) were present on the said Facebook page. The Defendant immediately thereupon caused the said Facebook postings to be removed and the said Facebook page to be closed as the Defendant had no knowledge of the alleged defamatory words being posted on Facebook.

d. The alleged defamatory words could have been written and/or published by any person having access to the Defendant's computer and/or Facebook page at the material time, inclusive of the aforementioned persons Steven Bachan, Simon Bachan or [**CHILD B**], the Fourth Named Defendant. [**NOTE:** Child B is a Claimant, not Defendant].

Assessment of the Evidence

11. Three witness statements were filed on behalf of the Claimants and the Defendant adduced no evidence before the Court.

12. The Claimants witnesses were all impressive, they gave their evidence in a frank and forthright manner and they engendered in the Court the feeling that they were witnesses of truth. The Court also found that their version of the material events was plausible and accepted their evidence without reservation.

13. On the other hand the Defendant failed to adduce evidence in support of her defence and in any event, her story did not seem plausible. The Court noted, accepted and found as a fact that the 2nd named Claimant, prior to the publication of the posts, made police reports concerning the conduct of the Defendant and initiated a private harassment complaint against her at the Arima Magistrate's Court. The Court also accepted the Claimants' evidence that the Defendant, prior to the posts, made remarks to them which mirrored the statements that were posted on her Facebook account and that she was the only person who ever made such remarks to them.

Issues

14. The issues which fall for the Court's determination are as follows:

    I. Whether the impugned words were defamatory.

    II. Whether the words referred to the Claimants.

    III. Whether the words were published by the Defendant.

    IV. Whether they were communicated to persons other than the Claimants.

Law and Analysis

What is Defamation?

15. Persons are entitled to their good name and to the esteem in which they may be held by others. All citizens have an intrinsic right not to have his/her reputation destroyed by defamatory statements made and/or published about them to a third person or persons without legal justification.

16. 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."

17. **This case involves the use of social media, more specifically Facebook, as the platform upon which certain statements in relation to the Claimants were published. The explosion of the use of these sorts of platforms for the publication of libellous statements is one in which the law has been slow in containing. However, there is growing recognition that statements on social media can amount to a "publication" taking a permanent form and can catalyse an actionable libel suit in certain circumstances. Halsbury's (supra) at paragraph 566 explains: "*An individual who posts defamatory material on the internet is a publisher of that material if it is subsequently accessed and read by a third party.*" There is therefore no presumption of publication via the internet and the published material has to be accessed and read (see Al Amoudi v Brisard and Another [2006] All ER (D) 21).**

18. **A claim presented in libel is a private legal action and the ultimate object is to vindicate the Claimant's damaged reputation and to provide for meaningful reparation for the private injury inflicted by the wrongful publication. The Defendant in any libel case can mount numerous defences including an assertion that he did not publish the words complained of.**

19. **The law recognises that a libel is occasioned when a defamatory statement is made by way of written or printed words or in some other permanent form which relates to the Claimant and which has been communicated to a person other than the Claimant.**

<u>What does the Claimant have to prove in a libel matter?</u>

20. In the Canadian case of **<u>Grant and Another v Torstar Corp and Others 2009 SCC 61</u>** Mc Lachlin CJ at paragraph 28 succinctly outlined what needs to be proven in order to sustain a defamation claim. He stated:

"[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person, (2) that the words in fact referred to the plaintiff and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism: see, eg, R A Smolla 'Balancing Freedom of Expression and Protection of Reputation Under Canada's Charter of Rights and Freedoms' in D Schneiderman (ed) *Freedom of Expression and the Charter* (1991) pp 272, 282. (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous per se: R E Brown *The Law of Defamation in Canada (2nd edn (looseleaf)), vol 3, pp 25–2 to 25–3.) The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless. The tort is thus one of strict liability."*"

The test to prove publication

21. The Court in **Crookes v Newton 2012 1 LRC 237** at paragraph 55 set out the test for publication:

> "[55] Proof of publication is necessary in order to establish liability for defamation. 'Publication' has an established meaning in the law of defamation. It refers to the communication of defamatory information in such a way that it is 'made known to a third party': *Gaskin v Retail Credit Co* [1965] SCR 297 at 299. Brown explains that 'it is a bilateral act by which the publisher makes available to a reader, listener or observer in a comprehensible form the defamatory information' (RE Brown *The Law of Defamation in Canada* (Vol 2, 2nd edn, 1994) para 7.2). Thus, **publication has two components: (1) an act that makes the defamatory information available to a third party in a comprehensible form and (2) the receipt of the information by a third party in such a way that it is understood.**"

22. Having reviewed the traditional publication rule in relation to the advent of new forms of media which can include social media, Deschamps J in *Crookes* concluded that the publication must be intentional in order to sustain a claim for defamation. At paragraph 59 she stated that:

> "[59] A more nuanced approach to revising the publication rule, and one that can be applied effectively to new media, would be for the court to hold that in Canadian law, a reference to defamatory content can satisfy the requirements of the first component of publication if it makes the defamatory information *readily available* to a third party in a comprehensible form. In addition, the court should make it clear that not every act, but only *deliberate* acts, can lead to liability for defamation."

23. In Gatley on Libel and Slander 12th Ed. at paragraph 9.5 it is recognised that there exists no presumption that the extent of a publication is significant simply because the entire online world may be potential audience.

24. **Challenges exist in this jurisdiction with respect to the ability to prove the source and place of publication as well as the methodology which is to be adopted to prove the authorship of the publication. The discharge of this burden may require evidence from service providers or Information Technology professionals. Proof of ownership of an account in the absence of evidence as to the IP address of the user, may be established where there is evidence as to a pattern of communication on the social media forum which indicates the identity of the user, having regard to the nature of the information which could include personal photographs, details of activities and social events as well as any other matter which would be personal and known only to the user. Essentially therefore, the requisite evidence has to be adduced so as to lead the Court to hold on a balance of probabilities that the account in issue belongs to or was controlled by the purported user/owner.**

25. In **Susannah Mole v. Angela Hunter [2014] EWHC 658 (QB)**, Tugendhat J in addressing the issue of the need to establish the defendant posted the alleged defamatory words, stated at paragraph 87 "*However the question in the present case is whether Ms Hunter can plead a case against Ms Mole that she was responsible for any of the postings, and, if so, that there was a significant number of readers or publishees. In the case of defamatory allegations posted on the internet, the court does not presume that there were any readers or publishees Al-Amoudi v Brisard [2006] EWHC 1062 (QB); [2007] 1 WLR 113 para [37]. The claimant, or counterclaimant, has to prove publication. This does not mean that the claimant has to have evidence from someone who did read the posting (although it helps a claimant if she does have such a witness). It is sufficient if the claimant can prove facts from which the court can properly infer that there were probably such publishees*."

26. Tugendhat J went on to say at paragraph 100, in answering the question as to the need to establish the defendant posted the alleged defamatory words, "*The question whether her denial of responsibility is accepted must be an issue to be resolved only at a trial, and not on the papers.*"

27. In the United States Court of Common Pleas of the 39th Judicial District of Pennsylvania – Franklin County Branch case **Keith Largent and Jennifer Largent v. Jessica Reed and Sagrario Pena No. 2009-1823** Judge Richard J. Walsh stated at page 3 when discussing

the issue of Facebook users: "*Facebook is a free social networking site. To join, a user must set up a profile, which is accessible only through the user's ID (her email) and a password. Facebook allows users to interact with, instant message, email, and friend or unfriend other users; to play online games; and to upload notes, photos, and videos. Facebook users can post status updates about what they are doing or thinking*".

28. **Without reservation this Court concludes that postings and information placed on social media sites such as Facebook, Twitter, Viber and Whatsapp has to be viewed as publications and the common law test in relation to libel will apply to same. Such posts are in a comprehensible form and they can be accessed and read by a potential worldwide audience.**

Were the words defamatory and did they refer to the Claimants?

29. The Court considered the law as it relates to libel and the test to determine whether words are defamatory. 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 of if it has a tendency to so do.

30. The words which are the subject of complaint were published on Facebook by the "Jenelle Burke" profile and accessed by Kimberley Walker (whose Facebook profile bears the name "Kim Walker") who is a friend of the 4th Claimant. The said Kimberley Walker took screenshots of the posts which read as follows:

    a) (Referencing the 4th named Claimant) "His mother has sex with him. He told me so told him go report it he said he is afraid. Mother call him buller man an say I would not become any thing in life but a big bullerman." (A picture of the 4th named Claimant with a direct link to his Facebook profile was appended to this post.)

    b) (Referencing the 4th named Claimant) "this boy step father [the 1st named Claimant] rape him and his mother did not go to the police and report it. I guess she put the man

before her child. He have a little sister am very fairful that I might have to call in the authority HE WILL RAPE HIS SISTER TOO. SOMEBODY CALL THE POLICE.THEY LIVE AT [Claimants' address]. (A picture of the 4th named Claimant was appended to this post.)

c) (Referencing the 2nd named Claimant) "Jail bird love to suck woman c***s. Leaves the daughter with her son and go to Sunflower Hotel to f**k with other people man. To mind her pervert husband. This is her Tel. Please call if u want a watery f**k. [Three of this Claimant's phone numbers] Call her if u like what u see." (A picture of the 2nd named Claimant was appended to this post.)

d) (Referencing the 3rd named Claimant) "Raped by her father (the 1st named Claimant) am her mother please help me to be strong and go to d police. (A picture of third named Claimant with a direct link to her Facebook profile was appended to this post.)

e) (Referencing the 3rd named Claimant) "She is a slut in her school Tacarigua Presbyterian and the principal of the school encourage she to do it for a cut of the money and the principal allows all the students to have sex in school. She make all the children into f**king sex slaves. Just know she might make all the children into porn stars. What a free f**k check (the 4th named Claimant) of Tacarigua press or the principal."

31. The imputation of the published words are that:

a) The 1st named Claimant is a paedophile and has abused or intends to abuse his children.

b) The 2nd named Claimant neglects her children and knowingly allows her husband to sexually abuse them.

c) The 2nd named Claimant calls her son a homosexual and allows his father to abuse him.

d) The 3rd named Claimant is a prostitute and/or is promiscuous and/or gives sexual favours at school.

32. Evident on the face of each of the Court Exhibits 1-5 was an endorsement of an icon resembling the earth. The Court is familiar with Facebook and it is within the Court's knowledge that this icon indicates that the privacy settings set on the Defendant's profile were set for full public viewing. Accordingly anyone could have viewed the posts, even persons who were not on Jenelle Burke's "friends list".

Control and administration of Social Media accounts

33. **Cases involving online publications can often involve persons who shroud themselves in anonymity. This anonymity can manifest itself in the form of fake social media profiles or email addresses registered to non-existent persons all designed to execute sinister motives without the hassle of accountability. It is this cloak of anonymity which can prove very difficult in pinpointing the wrongdoers in actions where the stain of defamatory statements are all too far-reaching. Alternatively, there are instances where a person's social media account may genuinely become compromised by a security breach or other unauthorised use. However, this Court is of the firm view that outside of these or similar instances, the holder of a social media account must be held responsible for what is published thereon and any such publication ought to be deemed to be reflective of the accountholder's personal views.**

34. **The Defendant in this case did acknowledge that the account on which the statements were published was indeed her account. An account on social media at minimum requires a personal email and password for the purposes of authentication of the identity of the user of the account. The Defendant enabled and permitted the use of her account by others. Would those other persons then be considered her agents, binding her to the comments made? Should she reasonably be expected to know what was published on her page?**

35. In **Wishart v Murray 2013 NZHC 540**, a judgment of the New Zealand Court of Appeal, the Court considered whether a social media user could be made liable for defamation for comments they ought to know about on their pages from third parties. At paragraph 81 the Court noted:

> "[117] Those who host Facebook pages or similar are not passive instruments or mere conduits of content posted on their Facebook page. They will be regarded as publishers of postings made by anonymous users in two circumstances. The first is if they know of the defamatory statement and fail to remove it within a reasonable time in circumstances that give rise to an inference that they are taking

responsibility for it. A request by the person affected is not necessary. The second is where they do not know of the defamatory posting but ought, in the circumstances, to know that postings are being made that are likely to be defamatory.'"

36. The Court then expressed further reservations in applying the "ought to know" test:

> "[137] The first concern is that, as Mr Rennie submitted, the 'ought to know' test puts a Facebook page host who does not know of a defamatory comment on the page in worse position than a host who actually does know. The latter will not be a publisher of the comment until a reasonable time for its removal has elapsed (and will not be a publisher at all if he or she removes it in that time). The former will be a publisher from the moment the comment is posted and unable to avoid that consequence by removing the comment from the Facebook page.
>
> [138] The situation will be more complicated when a Facebook page host who 'ought to know' of a defamatory comment on the page actually becomes aware of the comment. On the actual knowledge test, he or she can avoid being a publisher by removing the comment in a reasonable time. But removal of the comment in a reasonable time after becoming aware of it will not avail him or her if, before becoming aware of the comment, he or she ought to have known about it, because on the 'ought to know' test he or she is a publisher as soon as the comment is posted. This seems to us to make the test very difficult to apply.
>
> [139] The second concern is that the 'ought to know' test makes the Facebook page host liable on a strict liability basis, solely on the basis of the existence of a defamatory comment. Once the comment exists, he or she cannot do anything to avoid being treated as its publisher.
>
> [140] It can be argued that the 'ought to know' test is not entirely a strict liability one, because it applies only where the circumstances are such that the host should reasonably anticipate the posting of a defamatory statement. That is akin to making the host liable for the defamatory comment because he or she has been negligent in not taking steps to prevent the defamatory comment being made. Imposing liability for

damage to someone's reputation on the basis of negligence rather than an intentional act is contrary to the well-understood nature of the tort of defamation as an intentional tort: *Bell-Booth Group Ltd v A-G* [1989] 3 NZLR 148 at 155–156.

[142] The fourth concern is that the 'ought to know' test is uncertain in its application. Given the widespread use of Facebook, it is desirable that the law defines the boundaries with clarity and in a manner that Facebook page hosts can regulate their activities to avoid unanticipated risk."

37. In **Pritchard v Van Nes 2016 BCSC 686**, a case emanating from the Supreme Court of British Columbia, the Court acknowledged the need to balance freedom of speech as against protection of one's reputation. Justice Saunders in *Pritchard*, stated:

> "[119] However, at the same time the minority opinion of Deschamps J. in *Crookes*, at least, endorsed findings of liability in situations where the user "had reason to be aware" of defamation (*Crookes*, at para. 97). In my view the potential in the use of internet-based social media platforms for reputations to be ruined in an instant, through publication of defamatory statements to a virtually limitless audience, ought to lead to the common law responding, incrementally, in the direction of extending protection against harm in appropriate cases."

38. **In the absence of legislation that specifically addresses the use of social media and its real-world implications, the common law has to be developed so as to address and curtail the risk of harm. Having considered the position advanced in Wishart (supra), this Court is of the view, that a social media user should be held accountable for defamatory statements posted on his/her account, where:**

    i. **The owner of the account posted the defamatory information himself/herself.**

    ii. **The owner of the account, expressly authorised and/or enabled third parties, without the imposition of restrictions, to use the account and the evidence adduced establishes a course of dealing which can give rise to the reasonable inference that the owner intended to take responsibility for the posts effected by such third parties.**

iii. **The defamatory information was posted by an anonymous person or by persons who acted outside the scope of any authorisation given by the owner of the account as it relates to its use and the owner of the account, when made aware of the defamatory content, failed to have the content removed, edited or deleted, as soon as, on the application of an objective test given the prevailing circumstances, it was reasonably practicable for him/her to so do.**

39. **There is a need to have clearly defined legislative boundaries with respect to the use and management of Facebook and other social media accounts. Deeming and strict liability legislative provisions should be enacted and internet and mobile service providers should be mandated to furnish upon request, information to establish inter alia, IP addresses, the holders of mobile phone numbers and any other relevant details that may be needed to readily identify the owner of a social media account, mobile device and/or messaging applications such Whatsapp and Viber. The right to freedom of expression is not absolute and must be exercised responsibly and in a manner which does not eviscerate the rights and freedoms of others. The required legislative intervention is not optional but is mandatory!**

Findings

40. **In this case, the evidence adduced established that the alleged defamatory statements were in a permanent form. The evidence also established and the Court found as a fact that the words were communicated to persons other than the Claimants, as the publication resulted in the intervention by the Children's Authority. On the facts, the Claimants testified that even the words which made no reference to them individually, were brought to their attention and to the attention of other family members and friends.**

41. **The damage which social media postings can have is significant, as the disseminated material creates a perpetual imprint in cyberspace and there is no deletion or**

rectification which can be effected with respect to information uploaded to the World Wide Web, quite unlike a print copy of a book or newspaper, the copies of which could be destroyed.

42. **The reach and permanency of social media is such that extreme caution has to be exercised by its users. The law needs to be pellucid, so that all concerned must understand that social media use has to be engaged in a responsible way. Anonymity cannot obviate the need to be respectful of people's rights and users cannot recklessly impugn a person's character or reputation. Words in any form or on any forum, matter and must be used carefully and not impulsively. Within the public purview there is a misguided perception that the interaction over social media with flagged friends whether on Facebook, Twitter, Whatsapp, Viber, is private. This notion has to be dispelled. Such communication once uploaded becomes public and the said communication enjoys no cover of privacy protection. The advent and continued use of social media now results in a circumstance where the rules, regulations, rights, and responsibilities which govern traditional media must be applied. Social media ought not to be viewed as an unregulated media forum and anyone who elects to express views or opinions on such a forum stands in the shoes of a journalist and must be subjected to the standards of responsible journalism which govern traditional media.**

43. **In the instant matter, the Defendant did not dispute that the posts were on her Facebook account but she ran the "Shaggy defence" by saying "it wasn't me". Her pleaded case outlined that the account was set up in 2010 by named parties who all had access to same. She said that she did not publish the posts but removed same when they were brought to her attention. Social media accounts must be jealously guarded, just like a bank account and access to same should be restricted, as it is a forum where views expressed will normally be attributed to the owner of the account. One must be mindful that although the account is private, the posts emanating from the account occupy a public space and the content of these posts will be subject to public opinion and scrutiny as will the persons to whom the posts refer. Inevitably, if what the posts contain are malicious falsehoods, then those falsehoods can translate to real-world damage to someone's reputation. A word of caution is also extended to**

those who knowingly republish or "share" posts containing defamatory content. There must be some measure of restraint, if only to reconsider the accuracy or plausibility of truth in a post before its dissemination which is especially true of sensational and outrageous posts which can possibly cause irreparable harm.

44. **The Defendant did not call any witnesses nor was she subject to cross-examination and the Court formed the view that given the proximity of her relationship with the Claimants, as neighbours, and having accepted the evidence of the Claimants that on previous occasions she made remarks which mirrored the Facebook postings, that, on a balance of probabilities, she posted the words. The Court was disinclined to accept and rejected her contention by way of the Defence filed, that she was not responsible for the said postings.**

45. **The words posted by the Defendant were reckless and scandalous. They were intended to mean and would objectively be understood to mean that the 1st, 3rd and 4th named Claimants were engaged in an incestuous relationship; that the 2nd named Claimant engaged in numerous sexual relationships outside of her marriage, that she allowed the 1st named Claimant to rape the 4th named Claimant and that the 3rd named Claimant is a child who prostitutes herself. These meanings can individually or collectively adversely affect a person's character and reputation.**

46. **It is difficult to fathom how any right thinking member of society would contemplate to publish words such as those posted on the Defendant's Facebook account. Sadly however, far too often, social media is used as a forum to engage in this type of irresponsible and cruel discourse. This state of affairs cannot continue unabated and the Court therefore has elected to mould and apply the common law in a manner which gives some degree of protection to citizens. There is entrenched in local parlance the phrase, "You will pay for your mouth". Given the technological revolution which now characterises modern life, this traditional phrase has to be subject to an update and all social media account holders need to understand that they may now have to "Pay for their posts", if it is established that their posts are defamatory.**

47. **This Court therefore finds for the reasons that have been outlined, that the Claimants have, on a balance of probabilities, established that the Defendant published words about them which were defamatory and their claim in libel hereby succeeds. Accordingly, the Defendant is to pay to the Claimants damages and costs which shall be assessed by a Master in Chambers.**

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FRANK SEEPERSAD

JUDGE

†Invaluable assistance was provided by the Court Judicial Research Counsel Ayana Constance.