TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM CV2006-01002
(HCA S30 OF 2003)

BETWEEN

LUANNA TAYLOR

CLAIMANT

And

T&T NEWS CENTRE LTD.
DAVID MILLETTE

DEFENDANTS

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mr. A. Ramlogan for the Claimant
Mr. V. Maharaj for the Defendants

JUDGMENT

This is a claim in libel flowing from an article headed "OWTU branch president: No union men promoted at NP" which appeared in the weekly publication of the "TnT Mirror" on 5th July 2002.

The TnT Mirror is published by the First Defendant, T&T News Centre Ltd. and the article was written by the Second Defendant, David Millette, who was then a reporter employed by the First Defendant. The article itself was based on his interview of Marcelle Johnson who was at that time the President of the Oil Fields Workers' Trade Union Branch at the Trinidad and Tobago National Petroleum Company Ltd. Indeed, the article comprises almost exclusively of quotations of what Mr. Johnson said to Mr. Millette and is a series of assertions of fact. It does

not set out to be a commentary by Mr. Millette, or Mr. Johnson for that matter on anything. The importance of this will become apparent in due course.

What Mr. Johnson is quoted as saying in this article apparently refers to an earlier article published in the TnT Mirror on or about 28th June 2002 ("the prior Article"). Mr. Johnson says that this earlier article was headed "Surprise appointments, promotions lead to TENSION AT NP!" and, from what he says, must obviously have referred to Ms. Taylor, but I have no evidence of what it said about her, except for the Second Defendant's unchallenged evidence that the earlier article claimed that the Claimant, who had previously administered affairs at NP's nine Quick Shoppes, had been re-assigned and replaced by other workers.

The article in question (of 5th July 2002) ("the Article"), and what Mr. Johnson is quoted there as saying, sets out to be a refutation of what had been said in that earlier article. That part of the article in question and the words complained of by the Claimant are that Mr. Johnson said to Mr. Millette.

> "They talk about Rehanna Hassanali and Louanna Taylor, but the first thing to be said about those two is that they came to NP from the infamous UNC's PASU office, where they used to work.
>
> They were hand-picked by Seepersad Bachan to overseer the C-Stores because of their close relationship to her."

The Article in its entirety is included as an addendum to this judgment.

Publication of these words is admitted both in the defence (at paragraph 3.) and in the Defendants' statement of admitted facts filed 21st July 2004. That is a perfectly correct admission to make and leaves for speculation the reason underlying the contentions to the contrary, and on republication, set out in the written submissions filed on behalf of the Defendants. The First Defendant

clearly published the article. That Mr. Johnson was not sued is not relevant; a person who considers himself – or herself – defamed can, as a general rule, sue anyone who publishes the statement complained of Again. No issue was (nor could it be) raised that the words complained of did not refer to the Claimant, despite the submission on behalf of the Defendants that the spelling of her first name in the article is different to that in these proceedings.

The following defences were also raised:

1. The words complained of were not defamatory of the Claimant, either in their natural and ordinary meaning or by way of innuendo;
2. Justification;
3. Fair comment;
4. Qualified privilege;
5. The protection and immunity afforded by the Constitution of Trinidad and Tobago.

No issue of malice was raised by the Claimant either in her statement of case or by way of a reply.

As to the defamatory meaning of the words complained of, the Claimant puts forward six meanings attributable to those words in their natural and ordinary meaning:

1. The Claimant was a former employee and/or worker of an infamous office called PASU, which was an arm of the United National Congress Political Party;
2. The Claimant was "hand-picked" because of her close relationship with the then Chairman of the company, Ms. Carolyn Seepersad-Bachan;
3. The Claimant had improperly obtained employment because of her close relationship with the Chairman;

4. The Claimant had improperly obtained employment or a position in the company on the basis of political and/or other favoritism and bias based on her close relationship with the Chairman;
5. The Claimant was not qualified for the job she was performing and/or was not selected on the basis of her merit and ability;
6. The Claimant knowingly accepted this employment and/or position as a political or other favour.

The words complained of are said to be capable of the same meanings by way of innuendo.

Background

At the time the Article was written the Claimant was an Administrative Assistant, grade 5, at the Trinidad and Tobago National Petroleum Marketing Company Limited ("NP"), having joined the company in 1982 as a temporary secretary. She was then appointed to a permanent post at grade 1 in July 1983 and after a series of appointments was appointed to grade 5 on 1st March 1999. This was after she had completed successfully a number of training courses and workshops including "Secrets of Successful Marketing" in 2000. Prior to this last appointment, she had passed the CXC examinations in Principles of Business and Principles of Accounting in 1999. At the time of her appointment to grade 5 she had been working in the Human Resources Department, but was transferred to the Marketing Department on this appointment.

Her academic qualifications continued to progress and in 2003 she obtained an Associate Degree in Management, and a Bachelors Degree in Business Management in 2008. She started studying for her Masters Degree in Marketing after this.

Her duties in June/July 2002 included oversight and implementation of the NP's retail sales policies. She travelled around the country managing distributors of petroleum and other products sold by NP. When NP decided in 2000 to open its "Quick Shoppes" at its gas stations, she had been asked to co-ordinate and assist getting them ready to begin operations. This is a direct contradiction of the Second Defendant's evidence of her being re-assigned, and I accept what the Claimant says. She obviously continued to function in that capacity after July 2002.

She makes no mention in her examination-in-chief one way or another whether she worked at "…the infamous UNC's PASU office…" although this is specifically denied in her statement of case. She was asked nothing about this in cross-examination, although the defence denies the assertion in her statement of case that she never worked there. Given the plea of justification, it is for the Defendants to demonstrate that the Claimant did not in fact work there and the only evidence of this is Marcelle Johnson's evidence. His evidence-in-chief is that he had been informed in 2001 that the Claimant worked at the PSU office, and that he telephoned her there on several occasions.

Mr. Johnson does not say, however, that he actually spoke to the Claimant by telephone at the PASU office. Further, in cross-examination he was asked how many times he had called her there, to which his response was "more than one." This was after he was asked if he called her there on a regular basis and he responded "I don't know if it was regular, but I had reason to call there." He admitted that he never raised with her the issue of her working at the PASU office, saying "That was not my concern." He was adamant that he had raised the issue of the Claimant's transfer from Human Resources to Marketing with Mr. David Rampersad who was at that time the Divisional Manager of NP. This is flatly denied by Mr. Rampersad in his evidence-in-chief and he was not shaken on this in any way during his very brief, perhaps cursory, cross-examination.

On occasion during cross-examination Mr. Johnson was vague and I am not persuaded that this was due either to a difficulty or failure of recollection. I was not impressed by his evidence and have come to the conclusion that he did not in fact telephone the Claimant at the PASU office. Further, and more to the point, I am not persuaded that there is evidence before me to satisfy me that she did in fact work there.

Mr. Johnson's further evidence is that "I am also aware …that the Claimant and another employee were hand-picked by a senior official at NP to supervise the operations of its C-stores ahead of two other employees with more seniority in the same department and who were previously supervising the C-store operations." He does not give any evidence as to how he became aware of this and when it comes to the assertion in the Article that "they were hand-picked by Seepersad-Bachan…because of their close relationship with her…" he says nothing more than he met with Mr. David Rampersad on the matter and was told this by Mr. Rampersad. As I have already said, Mr. Rampersad denies that there was any meeting between him and Mr. Johnson and, once again, I find myself unpersuaded by Mr. Johnson's evidence.

I turn now to the various defences.

The Words Complained Of Are Not Defamatory

No issue is raised as to anything published in the prior article, or in any subsequent article. The complaint relates only to the two paragraphs pleaded in the statement of case.

In deciding this issue it is necessary to consider the context in which they were written, the manner in which they were published, the matters to which they relate and which would influence those to whom they were published in putting a meaning on them (see *Gatley on Libel and Slander* 10th Ed. Paragraphs 3:28,

3:29). The meanings attributed to the words complained of must not be strained or forced or an unreasonable interpretation (see *Jones v. Skelton* [1963] 1WLR 1360). It is a matter of impression to an ordinary person on a first reading, not on a later analysis (see *Hayward v. Thompson* [1981] 3AllER 450). The question is what the words would convey to the ordinary man: it is not one of construction in the legal sense (see *Lewis v. Daily Telegraph Ltd.* [1963] 2AllER 151). "One has to look for the gist of the libel…it is the perception of the ordinary man rather than simply the view of the Plaintiff, which is paramount. The ordinary man is going to read the whole of the article. He then gets a complete picture of what is being said and it is at that stage that the libel crystallises" (se *Forde v. Shah* [1990] 1TTLR 73). Ultimately the test is "would the words tend to lower the plaintiff in the estimation of right thinking numbers of society generally (*Sim v. Stretch* (1936) 52 TLR 669) or be likely to affect a person adversely in the estimation of reasonable people generally" (*Gillick v. British Broadcasting Corporation* [1996] EMLR 267 at page 275).

The principles guiding the Court in arriving at a conclusion as to whether words complained of are defamatory are perhaps best summarised in *Skuse v. Granada Television Ltd.* [1996] EMLR 278 by Sir Thomas Bingham MR. Reference can also be had to the decisions in *Bonnick v. Morris* [2002] 3WLR 820 and *Charleston v. News Group Newspaper* [1995] 2AC 55; and *Mapp v. News Group Newspapers* [1998] QB 520.

The Article as a whole and context in which it was written is important.

It was an interview requested by Mr. Johnson, the union's branch president at NP during which he expressed his views on certain matters concerning the manner in which NP was being operated. NP is a limited liability company owned by the Government of Trinidad and Tobago, and appointments to its Board of Directors are made by the Government "of the day." All this is well-known.

While there is no evidence as to what was said in the prior article it is obvious that Mr. Johnson is giving his views as to events taking place within NP's administration, and that he is unhappy with what had been said in the prior article. It is equally obvious that he was displeased with the manner in which Carolyn Seepersad-Bachan had functioned in her capacity as Chairman, and he was not impressed by her successor, Mr. Franklyn Khan. All this makes up the bulk of the Article. The only references to the Claimant are to be found in the words complained of and the four paragraphs that follow:

> "Hassanali, a confirmed sales representative, has simply been reassigned to see about the old network, but she was always based in south.
> And it should be noted that in the past, sales reps were always rotated.
> Taylor was not a confirmed sales rep, and she has now reverted to her substantive post.
> They have not lost any remuneration; the only thing they have lost is their contact with the sole suppliers."

I turn now to the words complained of and their natural and ordinary meanings as pleaded, applying the principles set out above.

The references to the Claimant and her employment at NP are to be read in the context of the Article as a whole, and the complaints about Seepersad-Bachan in particular. Those complaints are about the manner in which Seepersad-Bachan functioned, not about how the Claimant obtained employment at NP. The further complaint, if it can be so described, is that the Claimant was hand-picked by Seepersad-Bachan and so selected on the basis of a close relationship. None of this I should say, has proven to be factual. Additionally, the clear impression, if not an assertion of fact, is that the Claimant "came to NP from the infamous UNC's PASU office, where [she] used to work. That is flatly contradicted by the

evidence, the unarguable evidence, that the Claimant had been working at NP since 1983. Any reasonable, informed, person would come to this conclusion.

First, I have come to the conclusion that the words complained of do not have, nor can they properly be interpreted as having, the ordinary and natural meaning that the Claimant "…improperly obtained employment because of her close relationship with the Chairman" (paragraph 4(c) of the statement of case). There is nothing in the article to suggest that the Claimant obtained employment with NP, either improperly or otherwise, or that she did so based on her close relationship with the Chairman. A close relationship does not of itself mean necessarily that there is anything improper in the selection of a person to fill a position. There is nothing to show any close relationship between Seepersad-Bachan and the Claimant.

Second, there is nothing to suggest that the Claimant "…improperly obtained employment…on the basis of political and/or other favoritism and bias based on her close relationship with the Chairman" (paragraph 4(b) of the statement of case). There is nothing in the Article that links Seepersad-Bachan with PASU or any political party, which might itself raise the suspicion of there being some form of collusion in the Claimant being appointed to this position. Even if that were so, however, there is nothing – as I have said – to show that the Claimant improperly obtained employment. Again, the allegation is of her being hand-picked because of a close relationship, but there is nothing to show or to suggest that employment at NP was obtained on the basis of any close relationship.

Third, there is nothing in the Article to show that the Claimant "…knowingly accepted this employment …as a political or other favour" (paragraph 4(f) of the statement of case). Again, what the Article does say is that she was hand-picked by Seepersad-Bachan because of the close relationship. The Article suggests nothing to show that the Claimant played any role, active or otherwise, in this

employment being offered to her, nor that she accepted it as a political or other favour.

It is clear, however, that the words complained of mean or were intended to mean that the Claimant was a former employee and/or worker of an "infamous office" called PASU, which was an arm of the UNC (paragraph 4(a) of the statement case).

On the evidence, it is clear that PASU had been embroiled in public controversy over charges of illegal activities, in particular "voter padding" which the general public came to understand to mean plotting to fraudulently steal a general election by transferring votes from one constituency to another. From the evidence it is also clear that several people employed by PASU had been charged with criminal offences relating to this activity. This is the Claimant's unchallenged evidence and this is no evidence from anyone to the contrary. Her evidence on this is supported by a series of articles published by the First Defendant and attached to her witness statement. Although obviously hearsay, no objection was taken to them and while I do not regard them as being factual, they serve to lend some weight – however minimal – to the Claimant's evidence.

Having been described as former employee of PASU, it would be well within the thinking and opinion of the ordinary, reasonable person that the Claimant had been involved in some illegal activity, and if not illegal, then immoral, or that she had been associated with persons who had been so involved.

It is also clear that the words mean or were intended to mean that the Claimant was hand-picked because of her close relationship with the then Chairman (paragraph 4(b) of the statement of case).

Being hand-picked carries with it a connotation of favoritism when placed in the context of a close relationship. To the ordinary, reasonable, person a selection in

this manner is not based on merit or perhaps on seniority, but purely on the basis of the close relationship and, while there may not necessarily be anything illegal about it, does carry a connotation of impropriety. It is clear from the evidence, however, that the Claimant had both qualifications and experience which would qualify her for the position she held. There is no evidence to support the allegation of favouritism.

The Claimant, at paragraph 6. of the statement of case, places the same meanings on the words complained of by way of innuendo as she does in their natural and ordinary meaning. In the circumstances therefore and on the basis of what I have set out above I have come to the conclusion that the words complained of are defamatory, and further, that they are clearly defamatory of the Claimant.

Although words may be defamatory, the article as a whole must be considered because there may be other parts of it which take away the sting of the defamation (see *e.g. Charleston*; *Gordon v. Amalgamated T.V. Services Pty. Ltd.* [1980] 2 NSWLR 416) – the bane and the antidote are to be taken together.

This often happens when the conclusion of an article seems to remove the original or initial slur on the character. The mere presence of an antidote in the form of a denial does not of itself suffice, however, and the antidote must offset or displace the bane to the extent of the reader is not left in a position of having to chose between inconsistent assertions (see *Gatley para 3.29).*

The four paragraphs that follow the words complained of I do not in my view provide the required antidote; at least to the extent that it offsets or displaces the bane, or the sting, of the defamation. Nor does anything else in the Article.

Justification

A defence of justification requires the Defendant to prove that the substance of the defamatory statement, the main charge or gist of the libel, is true. It is not sufficient to prove that he believe the statement was true (see *e.g. Sutherland v. Stopes* [1925] AC 47; *Ford v. Shah).*

The particulars pleaded in the defence of justification come down in effect to the following:

1. After publication of the prior article, Mr. Johnson contacted the Second Defendant indicating that he wanted to respond to the first article;
2. The Second Defendant interviewed Mr. Johnson and was told by him that the Claimant, who was employed as an Administrative Assistant at NP, was performing duties at the Retail Sales Department and was working at the UNC's PASU office. Mr. Johnson on several occasions had cause to telephone the Plaintiff at the PASU office during normal working hours in connection with work-related matters at NP;
3. Mr. Johnson also informed the Second Defendant that he had personal knowledge that the Claimant and another employee were hand-picked to supervise NP's operations at it C-Stores. In his capacity as the OWTU branch president at NP, he expressed the union's dissatisfaction with the appointment of these two employees ahead of two other senior employees in that department to the then acting CEO (as Mr. Johnson describes the position), Mr. David Rampersad. Mr. Rampersad's response to this was that the appointment of the Claimant and the other employee was "the doing of the Chairman" Carolyn Seepersad-Bachan, and that he was consequently unable to change it.

I have already come to the conclusions that the Defendant has failed to prove that either Mr. Johnson spoke to the Claimant at the PASU office, or that she was employed there. Further, I have come to the conclusion that the issue of the

appointment of the Claimant and one other person ahead of two other senior employees was not raised with Mr. Rampersad. Indeed, even if it had been raised, there is nothing in the Article that refers to these appointments. Consequently, I am not satisfied that the statements complained of were true, and the Article was therefore necessarily incorrect.

The issue of malice being proven by the Claimant does not arise. The defence must fail.

Fair Comment

A defence of fair comment on a matter of public interest requires the defendant to prove that the statement or words complained of is, or are, bona fide comment and not a fact, and that there is basis for the comment. It is not a matter of whether the comment is fair having regard to the facts upon which it is based (see *e.g. Sutherland v. Stopes*). The facts pleaded must themselves be proven to be true. The facts must be stated accurately (see *e.g. Branson v. Bower* The Times 23rd July 2000). The comment must not misstate facts, and if a defendant misstates any of the facts upon which he comments, he negatives the possibility of fair comment. The omission of a highly relevant fact may amount to a misstatement (see *e.g. Gatley* at pages 237 et seq; *Hunt v. Star Newspaper* [1908] 2 KB 301; *Digby v. Financial News Ltd.* [1907] 1 KB 502).

Again, it falls to the Defendant here to prove the truth of the facts upon which the comments and the Article is based. I have set out my conclusion of fact that the factual basis upon which the Article is based has not been proven to be true.

Additionally, and perhaps in any event, the Article does not set out to be a commentary on events, nor does it express any opinion. It simply reproduces without comment the statements made by Mr. Johnson. The statements he makes

are all, certainly in relation to the Claimant, assertions of fact, and contain no element of commentary.

Again, this defence fails.

Qualified Privilege

Qualified privilege differs from fair comment in that it can also be a defence to defamatory misstatements of fact no matter how harsh or untrue they may be.

The defence is:

> *"Founded upon the need to permit the making of statements where there is a duty, legal, social or moral, or sufficient interest on the part of the maker to communicate them to recipients who have a corresponding interest or duty to receive them, even though they may be defamatory, so long as they are made without malice, that is to say honestly and without any indirect or improper motive. It is the occasion on which the statement is made which carries the privilege, and under the traditional common law doctrine there must be reciprocity of duty and interest: Adam v. Ward [1917] AC 309, 334 per Lord Atkinson* (see *Seaga v. Harper* 72 WIR (2008) 323 at para. 5).
>
> *"The development of the law is accurately and conveniently expressed in Duncan and Neill on Defamation, 2nd ed (1983), para 14.04:*
>
> > *"From the broad general principle that certain communications should be protected by qualified privilege 'in the general interest of society', the courts have developed the concept that there must exist between the publisher and the publishee some duty or interest in the making of the communication.""*

In relation to the publication of newspaper articles, the House of Lords in *Reynolds v. Times Newspapers* [2001] 2AC 127 accepted that a defence was available to those who published defamatory statements to the world at large. Formerly, the argument that the law should recognise the existence of a species of qualified privilege founded upon a duty on the part the maker of the statement to publish it to the world at large had not been generally accepted (see *Seaga*, at para 6).

Reynolds established what has become known as the test of "responsible journalism." The position in law set out there has been explained and expanded in several subsequent decisions *e.g. Loutchansky & Ors. v. Times Newspaper Ltd. & Ors.* [2001] 4 AER 115, and in *Bonnick v. Morris* [2003] 1 AC 300:

> *"Stated shortly, the Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputation of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of privilege journalists must exercise due professional skill and care." (Bonnick,* para *[23]).*

In *Jameel & Ors. v. Wall Street Journal Europe Sprl* [2006] UKHL 44, Lord Bingham said at para 32:

> *"The rationale of this test is, as I understand, that there is no duty to publish and the public have no interest to read material which the publisher has not taken reasonable steps to verify. As Lord Hobhouse observed with characteristic pungency [at page 238 of Reynolds], "No*

> *public interest is served by publishing or communicating misinformation". But the publisher is protected if he has taken such steps as a responsible journalist would take to try and ensure that what is published is accurate and fit for publication."*

Although Lord Bingham dissented, I think that these words can be taken as accurately summing up the position.

Lord Hoffman in *Jameel* at para 46 says in relation to the defence of qualified privilege, that Lord Nicholls clearly did not use the word "privilege in the old sense."

> "It is the material which is privileged, not the occasion on which it is published. There is no question of the privilege being defeated by proof of malice because the priority of the conduct of the defendant is built into the conditions under which the material is privileged. The burden is upon the defendant to prove that those conditions are satisfied. I therefore agree with the opinion of the Court of Appeal in *Loutchansky & Ors. v. Times Newspapers Ltd. (2-5) [2002] QB 783, 806* that "Reynolds privilege" is "a different jurisprudential creature from the traditional form of privilege from which it sprang." It might more appropriately be called the Reynolds public interest defence rather than privilege."

As Lord Hoffman goes on to say (at para 48), when applying the *Reynolds* privilege test the first question to answer is whether the subject matter of the article was a matter of public interest and the article should be considered as a whole, without isolating the defamatory statement. *"The question of whether the material concerned is a matter of public interest is decided by the judge. As has often been said, the public tends to be interested in many things which are not of the slightest public interest and the newspapers are not often the best judges of*

where the line should be drawn. It is for the judge to apply the test of public interest."

At para. 50 of *Jameel* Lord Hoffman goes on to say:

> *"In answering the question of public interest, I do not think it helpful to apply the classic test for the existence of a privilege occasion and ask whether there was a duty to communicate the information and an interest in receiving it. The Reynolds defence was developed from the traditional form of privilege by a generalisation that in matters of public interest, there can be said to be professional duty on the part of journalists to impart the information and an interest in the public in receiving it…having made this generalisation, it should in my opinion be regarded as a proposition of law and not decided each time as a question of fact. If the publication is in the public interest, the duty and interest are taken to exist. The Reynolds defence is very different from the privilege discussed by the Court of Appeal in Blackshaw v. Lord [1984] QB 1, where it was contemplated that in exceptional circumstances there could be a privileged occasion in the classic sense, arising out of a duty to communicate information to the public generally and a corresponding interest in receiving it. The Court of Appeal there contemplated a traditional privilege, liable to be defeated only by proof of malice. But the Reynolds defence does not employ this two-stages process. It is not as narrow as traditional privilege nor is there a burden upon the claimant to show malice to defeat it."*

Seaga took the development of the law one stage further by deciding that the *Reynolds* defence of responsible journalism extended to publications, not only by the media, but also to publications by any person who published material of

public interest in any medium, so long as the conditions applicable to "responsible journalism" were satisfied (Headnote, pp. 323-324).

In *Reynolds* Lord Nicholls listed ten non-exhaustive matters to be taken into account in deciding whether the publisher had taken proper steps to gather and publish the information, and whether those steps taken were responsible and fair.

The first question to be answered, therefore, is whether the Article was published in the public interest. While there are doubtedlessly arguments to the contrary, it would appear to me that the manner in which a state-owned corporation carries out its business, and how those operations are administered and managed, must be a matter of public interest.

The question then arises as to whether the Defendants in this claim satisfied the conditions of responsible journalism bearing in mind Lord Nicholls list in *Reynolds*. As was said in *Seaga* (at para 12):

> *"They are not like a statute, nor are they a series of conditions each of which has to be satisfied or tests which the publication has to pass. As Lord Hoffman said in Jameel's case (at [56]), in the hands of a judge hostile to the spirit of the Reynolds' case, they can become ten hurdles at any of which the defence may fail. That is not the proper approach. The standard of conduct required of the publisher of the material must be applied in a practical manner and have regard to practical realities (see [56]). The material should, as Lord Hope of Criaghead said (at [107]-[108]), be looked at as a whole, not dissected or assessed piece by piece, without regard to the whole context."*

The Article was based solely upon the interview of Mr. Johnson, which Mr. Johnson had himself requested in order to refute certain statements made in the prior article. There was no investigation of what he said to the Second Defendant,

and no attempt was made to verify what he had been told by Mr. Johnson. The Second Defendant says that he attempted to contact the Claimant twice by telephone but nothing more. Given that there was no urgency to publish, and that what he had been told about the Claimant by Mr. Johnson, it would only be reasonable for him to have made further attempts to speak with the Claimant or, at the very least, leave word with someone asking that she return his telephone calls. It would have been for him to decide whether he should also have left word as to what it was about without, perhaps, giving any detail of what had been said about her, but that would have been an easy decision to make – in favour of doing so. It must be kept in mind that the Article was itself a refutation of statements made previously said in the prior article. Having given Mr. Johnson the opportunity to refute, then surely the Claimant should have had the same facility.

The allegation can be regarded as serious – it is certainly not to be regarded as frivolous. There is nothing to indicate that the Second Defendant attempted to obtain any more information about the allegations made by Mr. Johnson from any other persons, and it is to be noted that a number of other persons had their names appear in this article. It would not have been difficult for him to contact any one of them, perhaps more than one, in an effort to get a wider perspective on what he had been told, and either to confirm, refute, or otherwise comment upon the statements made to him. He chose not to do so, and to put forward only what he had been told by Mr. Johnson.

In all the circumstances, I have come to the conclusion that the Defendants do not meet the test of responsible journalism and this defence therefore fails.

The Protection and Immunity of the Constitution

The Defendants plead that the conjoint effect of the common law, sections 2 and 3 of the Defamation Act Chap. 11:16, and sections 4(i) and (k) of the Constitution is that the Claimant is not entitled to maintain this claim or, alternatively, "…that the Defendants are immune or entitled to and or have a complete and unconditional defence on merits to the whole of the claim." In essence and in reality, the Defendants say that this immunity or protection flows from the fundamental rights to freedom of thought and expression (section 4 (i)) and freedom of the press (section 4 (k)).

I do not wish to appear dismissive of the submissions in support of this defence They are comprehensive and trace the diverging approaches taken in the United States of America and England, for example, and for which I am indebted to Advocate for the Defendants. There are, however, two areas on which I need to touch.

First, the approach taken in the United States of America starting with *e.g. New York Times v. Sullivan* 376 US 254 is in relation to government bodies and public officials, and perhaps persons in the glare of the public. That approach, in relation to the first two categories I mention, has found a measure of approval in English jurisprudence *e.g. Goldsmith v. Bhoyrul* [1998] QB 459. It does not appear to have been the approach taken in relation to other persons, corporations or otherwise.

Second, and more important, is the decision of the Privy Council in *Panday v. Gordon* (2005) 67 WIR 290. In those proceedings the defendant (Panday) to a libel action pleaded protection based on the fundamental right to express political views (section 4(e) of the Constitution) and the Privy Council examined that defence in depth at paragraphs 17-25 of the judgment. While the defence there is based on a different fundamental right, the Privy Council's line of reasoning is still very relevant and applicable to the defence put before me. In essence, and

placed in the context of the present circumstances, that reasoning can be expressed as follows.

The rights to freedom of expression and freedom of the press are rights *"…of fundamental importance in all democracies…This is confirmed by the drafting history…"* of the Constitution and the inclusion of those rights as separate rights *"…underlines the special importance attached to [them] by those who framed the Constitution"* (*Panday*, para. 19.)

This does not suggest that these fundamental rights are to have no bounds or that they are *"…capable of being misused, and debased, by permitting a [person's] reputation to be destroyed at will: as would be the position if the gravest of factual allegations known by the maker to be false could be made with impunity and without the [person] having any redress or means of establishing the truth" (Panday*, para. 21.)

> *"Nor is this repellant conclusion supported by the apparently unqualified nature of the right as set out in section 4. The general format of section 4 is to list rights, such as 'freedom of the press', briefly and without elaboration. Plainly the intention was that the courts should work out the practical detail. The content of the rights was a matter for the judges. Necessarily so, not least because some of the rights may sometimes be in conflict with each other. As noted by Cory J in the Supreme Court of Canada, publication of defamatory statements 'constitutes an invasion of the individual's personal privacy and is an affront to that person's dignity': Hill v. Church of Science of Scientology of Toronto (1995) 126 DLR (4th) 129, 164, para 121. Thus freedom of expression and the right to respect for private life, both of which are listed without qualification in section 4, may sometimes collide. The Constitution does not attempt to resolve problems of this kind. These are matters left to the judges. It is for*

> *the courts to decide, in a principled and rational way, how the fundamental rights and freedom listed in the Constitution are to be applied in the multitude of different sets of circumstances which arise in practice. It is for the courts to decide what is the extent of the protection afforded by these constitutional guarantees." (Panday,* para *22).*
>
> *"A further pointer in the same direction should be noted. An absolute right to express political views as suggested would be in conflict with and, so it is said, would override the common law of defamation existing of the commencement of the Constitution." (Panday*, para *23).*

I would add that the same principle applies to a right to freedom of expression and freedom of the press.

Nor, concluded the Privy Council, was section 4 qualified only to the extent that the views expressed must be held in good faith. *"[S]ection 4(e) deliberately eschews any such rigidity…*"because"*…this submission would mean that section 4(e) would preclude the common law …developing along the lines mentioned above in respect of political discussion. It would preclude any limitation which requires the exercise of a degree of care when making defamatory statements of fact to the world at large. It would preclude a Reynolds "responsible journalism" type of limitation. That cannot be right. Whether any such limitation on the right to express political views does, or should, exist in the common law of Trinidad and Tobago was not a matter argued on this appeal."*

In my view the same reasoning is to be applied in relation to freedom of expression and freedom of the press. Further, no such limitation as referred to by the Privy Council should exist in the common law of this country. If it existed, a person about whom an allegation was made, and such allegation was known to be

false, could be made "…with impunity and without the [person] having any redress or means of establishing the truth."

It is, regrettably, notorious that in this jurisdiction accusations are made and things said about persons which cannot be supported in fact, and which are founded only on speculation or rank hearsay. To deprive those persons of redress in law would be in my view fundamentally wrong. "Responsible journalism" must be a hallmark of the media, and responsible reporting and commentary by members of the public generally is equally important. Speculation, and repetition of speculation based on perception rather than fact, can be irrevocably and irremediably destructive of a person's reputation and dignity and, regrettably, our society has developed a reputation of translating fiction and perception into some form of fact: perceptiveness is an attribute far too often lacking in our everyday assessment, analysis and decision-making.

I have already set out my conclusions on the defence of qualified privilege and in the circumstances remain unpersuaded (as I was in *Augustine Logie v. National Broadcasting Network Ltd.* HCA 556 of 2001 at page 27) that there is an unfettered right of the press, or of any person, to defame.

This defence therefore also fails, and there will be judgment for the Claimant.

Damages

It has been submitted on behalf of the Claimant that an award of $100,000.00 is appropriate in the circumstances in this case. Unfortunately, there are no authorities cited in support of this, and there are no submissions on behalf of the Defendant.

I have looked at the factors to be considered including the seriousness of the libel, the effect of the publication on the reputation of the Claimant, including her assertions of being over-looked for promotion; the Defendants' conduct in relation

to the publication, in particular the failure to verify the allegations and the failure of the defence of justification. The last two of these factors are regarded as being proper foundations for an award to include an element for aggravated damages.

I have also considered the range of awards in a number of decisions including: *Krishna Persad v. Trinidad Express Newspapers Ltd. & Ors.* CV2007-00981 where the award was $35,000.00; *Debra Moore-Miggins v. Anderson Charles & T&T News Centre* HCA 138 of 2001 where the awards were $130,000.00 for compensatory damages and $20,000.00 in exemplary damages; *Stanley Ryan v. T&T News Centre Ltd.* HCA No. S820 of 2001 where the award in general damages was $50,000.00 and the award of exemplary damages was $20,000.00; *Cyriacus Liverpool v. Cecily Assoon & T&T News Centre Ltd.* HCA S56 of 2001 where the award was $70,000.00; *Charmaine Forde v. Raffique Shah & T&T Newspaper Publishing Group Ltd.* HCA 4709 of 1988 where the award was $80,000.00 including aggravated damages, and $10,000.00 in exemplary damages; and *Panday v. Gordon* where the award of the Court of Appeal was $300,000.00.

While none of those decisions concern a claimant in the same position before me, there are of some assistance in arriving at what I think is an appropriate amount in damages. After full consideration I place that amount at $70,000.00 including an amount for aggravated damages and award same. Interest at the rate of 12% per annum is to be paid on this award from the date of the writ.

The Defendants will also pay the Claimant's costs computed in accordance with the prescribed costs regime set out in the Civil Proceedings Rules, the matter having continued under those rules although initially begun by writ. The award, together with interest at the rate of 12% from the date of the writ to today's date totals $125,922.40. The prescribed costs on that amount are $27,888.36.

In summary:

1. There is judgment for the Claimant against the Defendants;
2. The Defendants will pay to the Claimant general damages in the amount of $70,000.00, together with interest thereon at the rate of 12% from 7th January 2003 to judgment;
3. The Defendants will pay the Claimant's costs in the amount of $27,888.36.

28th August 2009

C.V.H. Stollmeyer
Judge