

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2020-03058**

**BETWEEN**

**AVINASH NAIR  
VEDA ORIE**

**Claimants**

**AND**

**MERLYN MOHAMMED**

**Defendant**

**Before the Honourable Madame Justice Margaret Y. Mohammed  
Dated 29 January 2025**

**APPEARANCES:**

**Mr Robin Ramoutar Attorney at Law for the Claimants**

**Ms Nazima Ali Knox Attorney at Law for the Defendant**

### **JUDGMENT**

#### **INTRODUCTION**

1. The Claimants' case is for damages for nuisance, malicious damage and defamation arising out of numerous altercations and the alleged conduct of the Defendant, their neighbour. The Claimants alleged that the Defendant has been verbally abusing them, reporting their business which involves welding and fabricating to various Government bodies to have it closed, defamed them in front of their customers and neighbours and, purposely caused damage to their fence wall and driveway by leaving a running hose at the base of the Claimants' fence wall and also by not properly channelling the water from her roof away from their fence wall.

2. The Claimants have brought this action<sup>1</sup> seeking the following orders against the Defendant:

- (a) Damages for the cost of repairing their fence wall and driveway which was damaged as a result of the malicious acts and/or nuisance of the Defendant in the purposeful channelling of water collected on her premises from various areas into and onto the base of the said wall resulting in the undermining of the wall and driveway abutting the same.
- (b) Cost of repairing the tyre on the Claimants' motor vehicle TDN-8554 which was maliciously damaged by the Claimant on/or about 18 August 2020.
- (c) Cost of clearing and repairing wastewater drainage line which was maliciously blocked by the Defendant on/or about 4 April 2020.
- (d) An order that the Defendant do cease and desist from any and all verbal assaults upon the Claimants.
- (e) An order that the Defendant do cease and desist from causing disturbance to the Claimants' peaceful enjoyment of their property either by her own acts or those of her family members and other visitors to her premises.
- (f) An order that the Defendant do remove all fixtures attached by her to the Claimants' wall and repair all holes made into same.
- (g) An order that the Defendant do cease and desist from making continued, malicious reports to various state agencies with respect to the operations of the Claimants' business.
- (h) An order that the Defendant do cease and desist from all defamatory statements made against the Claimants.

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<sup>1</sup> Amended Claim Form and Statement of Case filed 23 April 2021

- (i) An order that the Defendant do pay to the Claimants damages for defamation of character suffered as a result of the defamatory statements made by the Defendant against both Claimants on numerous occasions on 8 September 2019, 9 September 2019, 12 November 2019, 26 March 2020, 5-6 April 2020, June 2020 and 18 August 2020.
- (j) Costs.
- (k) Interest at the statutory rate under Section 25 of the Supreme Court of Judicature Act<sup>2</sup>, such interest to be computed for that period from the date of loss to the date of judgment.
- (l) Such further and/or other relief as the Court may deem just.

#### **THE CLAIMANTS' CASE**

3. The Claimants have resided in New Grant, Princes Town ("the Claimants' property") for the past 8 years and they carry on their sole trader business known as "NAIR Smart Solutions" ("the Claimants' business"), which is a welding and fabrication operation that has been in operation on the Claimants' property since 2012. The Defendant is the occupier of a neighboring property ("the Defendant's property") to the west of the Claimants' property and resides there with her children and her present husband, Mr David.
4. According to the Claimants, Mr David was employed by them for a period of time leading up to 2019, during which he became familiar with the Defendant and moved into the Defendant's property with her and her children. In 2019, when the Claimants and Mr David parted ways animosity grew between the Claimants and the Defendant. The relationship continued to deteriorate resulting in the involvement of the police on numerous occasions. The first incident was on or around 16 August 2019, when the First Claimant warned a person who was on the Defendant's property not to climb onto the Claimants' fence wall.

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<sup>2</sup> Chapter 4:01

5. The Claimants asserted that the Defendant has continuously cursed them as well as made threats to their lives, the Claimants' property and the Claimants' business between September 2019 and August 2020. One such incident was on 7 September 2019, when the First Claimant parked his vehicle on the side of the street close to his home whilst doing yard work. The Defendant began cursing the Claimants which continued for 3 days during which she made certain derogatory statements about the First Claimant's sexuality, work ethic and the Claimants' business in the presence of their neighbours as well as the First Claimant's customers and employees. She also issued threats against the Claimants' safety and business and accused them of setting up cameras that spied into her daughter's bedroom.
6. The Claimants asserted that the Defendant has performed several acts of nuisance against them which commenced on 12 November 2019 and continued up to March 2020 including Christmas day and Carnival. They contended that the Defendant's actions have prevented them from enjoying the Claimants' property peacefully and they have called the police on numerous occasions to intervene on their behalf. The offending actions of the Defendant which the Claimants have detailed include the playing of music loudly on the Defendant's property; and on some occasions the music contained profanities.
7. The Claimants also asserted that on the night of 25 December 2019, the Defendant caused and/or permitted her children, her husband and other guests on the Defendant's property to throw stones at the Claimants' property which harmed their dogs which were in the yard and which made contact with the walls of the Claimants' house and the Claimants' vehicles. The Claimants contacted the Princes Town police station and officers visited and warned the Defendant. Thereafter, on Carnival Monday 2020, the Defendant cursed at one of the Claimants' customers who visited the Claimants' business to check on an ongoing project causing them to leave.
8. The Claimants also asserted that on the night of 29 March 2020, they observed and recorded a person leaving the Defendant's property and dumping diesel fuel

in their bin which was located at the roadside which caused them to wash the bin. Thereafter, on 5 and 6 April 2020, the Claimants heard banging against the Claimants' property and when they investigated, they saw the Defendant instructing her children to throw stones at the Claimants' property.

9. The Claimants further asserted that the Defendant has caused damaged to their fence wall and driveway. In or around September 2019, the Defendant began drilling into their fence wall which is situated on the boundary line of the Claimants' property and appended certain items to it including a shed. By letter dated 12 November 2019, the Claimants called upon the Defendant to cease and desist from these actions and to remove the said items, but to date these items have not been removed. They contended that the Defendant caused water flowing from a drain on the Defendant's property to undermine the fence wall on the Claimants' property. They informed the Defendant of the water flow issue and the damage it was causing to their fence wall, but the issue was never rectified and has resulted in water seeping into the foundation of the said fence wall causing cracks which allows water to trickle through to the Claimants' property causing further damage.
10. In June 2020, the Claimants reported the water flow issue to the Public Health Inspector and he visited the Defendant and warned her about the improper drainage of the Defendant's property. The Defendant and her husband, then directed the guttering water from the front of the Defendant's house directly to the foot of the Claimants' fence wall resulting in a substantial increase in the volume of water undermining the said fence wall. The fence wall suffered severe cracking down to the foundation and water now flows freely through the cracks. The Claimants' driveway which abuts the fence wall has also been undermined by the water and has suffered cracking throughout the entire length of the driveway close to the foundation of the Claimants' house. The Claimants asserted that the Defendant continued to intentionally channel her water to the foot of the Claimants' fence wall despite their complaints and they have sought and obtained

an estimate which quantified the cost of repairing the damage to the fence wall and driveway as being in the sum of \$20,500.00.

11. The Claimants asserted that the Defendant began turning on her garden house and leaving it on for several hours at the base of the Claimants' fence wall which abuts the Defendant's property in or around 27 November 2020. The water flows freely through and into the cracks on the Claimants' fence wall and its foundation causing damage to the said wall and the Claimants' driveway. The Claimants contended that underlying substrata of the driveway which is made up of sand that was compressed and packed as the base layer for the casting of the driveway, has been washed away in large sections by the constant flow of water from the Defendant's property causing the driveway to become hollow and increasing the size and depth of the cracks. The driveway is no longer repairable and the Claimants have obtained an estimate from Mr Winston Ragoonanan in the sum of \$50,800.00 for the cost of breaking the current driveway to relay the base foundation and reconstructing it.
  
12. The Claimants asserted that the Defendant has maliciously caused damage to the Claimants' property. On 26 March 2020, the Defendant was visited by relatives and/or friends and one of the visitors could be heard stating that the side of the Claimants' fence wall that faced the Defendant's property was hers and she could do what she wishes with it. The same person was also heard instructing the Defendant to clog up the Claimants' waste water line which runs into a drain which abuts both properties to the rear. Shortly thereafter, on 4 April 2020, the Claimants' waste water line backed up into the laundry room and the kitchen while the Claimants were doing laundry, and they discovered a clog had been pushed 15ft into the drain line from the outflow which empties into the drain. They described the clog as being made out of plastic and foam sealant and asserted that while the excavating was taking place the Defendant and her husband could be heard laughing loudly. They also asserted that they incurred the cost of \$2,000.00 to excavate, clear and relay the waste water line, but on the

following day they discovered a boulder had been inserted into the same waste water line from the outflow.

13. Further, the First Claimant observed tacks in the tyre of his vehicle when he parked it on the roadway which abuts both properties on 18 August 2020 and he incurred the cost of \$100.00 to repair the said tyre. The Claimants reviewed security camera footage of the roadway and saw that the Defendant had placed tacks on the roadway in the area that the First Claimant parked his vehicle. They then reported the matter to the police who again visited the Defendant and warned her, but when the police departed she began cursing and threatening the Claimants.
14. The Claimants asserted that the Defendant has made numerous complaints to the police and Government agencies about their business in an attempt to have them shut down. The Defendant made several reports to the Environmental Management Authority ("the EMA") with respect to the noise, welding and painting that takes place at the Claimants' business. The Claimants' business has been inspected by both the EMA and public health authorities on numerous occasions, but to date neither of these agencies have found reason to fine or shut down the Claimants' business. The Defendant has also made reports to the Trinidad and Tobago Electricity Commission ("T&TEC") with respect to the power use by the Claimants' business and restrictions were placed on the voltage of power allowed onto the Claimants' property, thus forcing the Claimants to relocate part of their operations.
15. In light of the foregoing the Claimants also pleaded the following sums in their particulars of special damages, namely the: (i) sum of \$20,500.00 as the cost of labour and materials to repair perimeter/fence wall and driveway; (ii) sum of \$2,000.00 as the cost of labour and materials to repair clogged wastewater line in the; the sum of \$100.00 as the cost to repair the Claimants' tyre; and (iv) the sum of \$50,800.00 as the cost of labour and material to repair and reconstruct their driveway.

16. The Claimants also claim damages for defamation of character in the sum of \$50,000.00. In their particulars of defamation, the Claimants asserted that the Defendant began cursing at them when the First Claimant's vehicle was observed parked on the side of the street close to the Claimants' house while he was doing yard work on 7 September 2019. The Defendant continued to curse at the Claimants for 3 days in the presence of their neighbours, customers and the employees, making disparaging remarks that the First Claimant was a "bullerman" who liked "boys" and the Claimants were nasty people who had fired Mr David without paying him properly for his work and did substandard work using cheap materials.
17. The Defendant's cursing continued intermittently and on 12 November 2019, she cursed the Claimants again in the presence of their neighbours, customers and the employees, making similar remarks that the First Claimant was a "bullerman" who liked "boys" and the Claimants were "crooks doing cheap work for big money". She continued to call the First Claimant a "bullerman" who liked "boys" on many other occasions including 18 August 2020, when she had visitors to her home which included relatives and/or friends of Mr David and neighbours. On this occasion, the Defendant also stated that the Second Claimant was a "hoe" who the First Claimant sent out to make "fares", as well as pointed out to her guest that the Claimants had set up cameras on the Defendants' house and that the First Claimant had pointed one into her daughter's bedroom to spy on her daughter because he was a "nasty man" and a "pedophile".

#### **THE DEFENCE**

18. The Defendant opposes the relief sought by the Claimants. The Defendant asserted that the Claimants are not entitled to any damages whatsoever and instead contends that the Claimants are the deliberate and intentional tortfeasors causing her injury, damage, distress and financial loss.
19. According to the Defendant, the parties' houses are very close to each other and the construction of her house on the Defendant's property was completed in the

last quarter of 2013. In February 2015, her brother and his family began occupying the Defendant's property and remained there until about December 2018, but she occasionally spent weekends at it. The Claimants operated the Claimants' business from the Claimants' property on a very small scale, until about three years ago (in or around 2017) when they began using heavy equipment and dangerous gases.

20. In or around January 2019, the Defendant moved into the Defendant's property full time with her ex-husband Mr Mohammed and she began to experience the constant grinding of metal, emission of gaseous fumes, uncontrolled spraying of paint at high pressure and fluctuations of voltage due to the effects of the Claimants' business as a welding and fabrication operation. She asserted that the Claimants conducted their business in a manner that was not consistent with a residential neighbourhood where quiet enjoyment of property is a reasonable expectation. She denied that her present husband Mr David was of any relevance to the animosity between herself and the Claimants. She asserted that the animosity between herself and the Claimants stems from their obnoxious, uncooperative and spiteful responses to the many complaints raised in respect of the emissions from the Claimants' property, both by herself and her ex-husband Mr Mohammed long before the presence of Mr David.
21. The Defendant asserted that she has 2 daughters aged 8 and 10 who live with her at the Defendant's property and they are impacted by the operation of the Claimants' business. She asserted that her daughter who is aged 8 is autistic and suffers from among other things severe noise sensitivity, while her other daughter aged 10 was born with a heart condition and the noises, gases and chemicals used in the Claimants' business exacerbate her respiratory problems, rashes and migraine headaches. She has raised this as an issue with the Claimants to no avail as the only response has been an increase in the noise making and emission of fumes.
22. The Defendant also asserted that she is a primary school teacher and as part of her duties she is required to conduct classes from home, but due to the operation

of the Claimants' business she is unable to conduct these classes peacefully. She has also communicated this issue to the Claimants but there was no response. She asserted that she has had to resort to keeping the windows and doors shut at all material times as a result of the Claimants' actions. She has also attempted to mitigate her and her family's suffering by using the air conditioning, which caused a substantial increase in her electricity bill and had to be discontinued. She is unable to reside comfortably in the Defendant's property and whenever possible she takes her family to stay at the home of a relative.

23. The Defendant denied hanging over the dividing wall between the Claimants' property and the Defendant's property and attempting to eavesdrop in the Claimants' conversation on 16 August 2019. She also denied the allegation made by the Claimants of her cursing continuously for 3 days during which she made disparaging remarks about the Claimants' sexuality, work ethic and also threats to the Claimants' business. She sought to explain that the Claimants have a history of parking vehicles directly in front of her gate and the First Claimant's vehicle is a truck with an iron rack that exceeds the original width of the truck which causes narrowing of access on the already narrow private roadway. She discussed the issues she experienced with accessing the Defendant's property with the Claimants on several occasions including 7 September 2019 but the First Claimant continued to park his vehicle in such a manner that impeded her access to the Defendant's property.

24. The Defendant denied the incident on 18 August 2020 as alleged by the Claimants and stated that they had the practice of accusing her of everything that she complained to them about. In response to her complaints about their noise making, the Claimants complained to the police that she was making noise. On the said 18 August 2020, the police visited the Defendant's property in response to a complaint from the Claimants. Later that night when her mother in-law and other relatives visited, they were having a private conversation in the gallery of the Defendant's property and she observed the Claimants pressed up to the fence wall eavesdropping. She asserted that during that conversation she pointed out

to her mother in-law and other relatives that the Claimants' cameras were pointing straight into her bedroom and the children's bedroom. She also asserted that the Claimants erected six (6) security cameras pointing at her porch, kitchen, children's bedroom, her bedroom, her front gate and her driveway. The Defendant contended that these actions are aggressive and intimidatory and further deprive her and her family of their right to privacy and peaceful enjoyment of her home.

25. The Defendant denied performing several acts of nuisance against the Claimants which commenced on 12 November 2019 and continued up to March 2020 including Christmas day and Carnival. She denied facing her speaker box towards the Claimants' property and playing loud music which sometimes contained profanity all throughout the day; and she denied throwing stones at the Claimants' property or causing anyone to do so and she was not aware of any police reports made relative to same. She asserted that the layout of her living room faces the Claimants' property and she sometimes listens to music from a small stereo a reasonable to low level and cannot do otherwise due to her youngest daughter's sensitivity to loud noise. She also asserted that the only time the police visited her property during the Christmas season was on the night of 25 December 2019 in response to a false report about the level of the music being played at the Defendant's property, but they left without issuing any warning.
26. In relation to the incident on Carnival Monday 2020, the Defendant asserted that the Claimants' customers parked in the middle of the roadway completely blocking her from leaving the Defendant's property and when it became necessary to leave she merely asked them to move which the owner of the vehicle complied with after a while. She denied that she had cursed the said customer until he was forced to leave. She maintained that she had only communicated to the First Claimant to stop encouraging his customers to block her driveway and to utilise one of the many alternatives. She denied dumping any substance, fuel or otherwise into the Claimants' bin and instructing her children on 5 and 6 April 2020 to throw stones at the Claimants' property.

27. In relation to the damage of the fence wall and driveway as alleged by the Claimants, the Defendant denied that she caused any such damage. She contended that any video footage of the Claimants showed her washing and sanitizing the area where the family dog is kept. She asserted that there was a fence wall separating the Claimants' property and the Defendant's property and she hung 3 small flowerpots on it in or around September 2019, but removed them a few days after the Claimants had objected. She had also plastered and painted the fence wall and built a ground beam at her own cost to prevent it from failing into the Defendant's property. She contended that was no water running on or against the fence wall and all wastewater is connected to one main waste line which runs into her drain. She has never left water running for any extended period against the fence wall and puts the Claimant to strict proof.
28. The Defendant asserted that the Claimants' fence wall is exposed to the natural rainfall and no other waste from the Defendant's property. She denied ever receiving any visits from the Health Inspector warning her about her drainage and asserted that the only reports to the Health Inspector that she was aware of was the one she had made about the noise, fumes and gases emanating from the Claimants' property. She asserted that the Claimants constructed a drain alongside the fence wall for the disposal of their wastewater and animal faeces, but it was never completed and as a result the water from the Claimants' property flows alongside it to the back retaining wall causing it to sink by several inches. Further, the Claimants' faulty guttering and waste line directly overflows onto the Defendant's property, then runs down the natural slope of the land causing her retaining wall to split where the water settles.
29. The Defendant denied clogging the Claimants' waste water line with any man made material or otherwise. She asserted that the backing up of the water line was a fairly regular occurrence and causes damage to the Defendant's property, as well as causes the back of her home in the vicinity of her kitchen and kitchen garden to be constantly smelling of dog faeces. She also had no knowledge of the tacks in the roadway which caused damage to the tyre of the Claimants' vehicle

and the visit from the police officers on either 16 or 18 August 2020 was unrelated to that incident.

30. In relation to the complaints made to the police and state agencies, the Defendant asserted that she informed the First Claimant of the level of noise the Claimants' business was causing and how it was affecting her ailing children but he was unresponsive. She then made two reports to the Princes Town Police Station about the level of noise and toxic fumes from the Claimants' business. In particular, there was an incident where the paint fumes covered the front windshield of her vehicle which she had removed at her own cost. The Claimants were informed of the issue and stated that they would use a lower pressure to paint, but the problem persisted. She also made several reports to the EMA, Town and Country Development and the Ministry of Health and Regional Corporation complaining about the impact the Claimants' actions are having on her children.
31. She asserted that due to the heavy industrial equipment used by the Claimants in their business she suffered loss and damage to her appliances, namely her laptop, smart tv and treadmill. She sought to explain that she had been advised by the T&TEC that the Claimants' business was overloading the transformer which resulted in them placing a voltage restriction.
32. Notably, although the Defendant made several allegations against the Claimants she did not file any counterclaim seeking any damages for her alleged loss.

#### **THE REPLY**

33. In Reply, the Claimants asserted that they do not use dangerous gases in the operation of the Claimants' business and they have been issued with a Certificate of Environmental Clearance by the EMA. They are not aware of the medical condition of the Defendant's children or the impact, if any, that the operation of the Claimants' business has had on her children's health and wellbeing. They also asserted that the cameras on the Claimants' property were installed after threats were made by the Defendant to harm their dogs and after she was seen

instructing her children to throw stones at their dogs. The said cameras do not point or face at the windows of the house on the Defendant's property.

34. The Claimants asserted that the roadway referred to by the Defendant as private, belongs to the Development where they live and is open to the public and residents. The First Claimant's vehicle is the only vehicle which parks on that roadway and he only utilises the said roadway on the occasions when there is grass cutting or other works on the other side of the Claimants' property which may cause damage to his vehicle. They also asserted that the Defendant's ex-husband Mr Mohammed had undermined their fence wall while construction was ongoing at the Defendant's property and rectified it by plastering the exposed parts and building a ledge. Further, Mr Mohammed and the First Claimant had pooled resources to construct the box drain at the rear of the Claimants' and the Defendant's property to facilitate their drainage, but neither he nor the Defendant have completed the drain on the Defendant's side of the fence wall.

#### **THE ISSUES**

35. Based on the several allegations made by both parties I have narrowed the issues to be determined as follows:
- (a) Whether the Defendant's conduct interfered with the Claimants' peaceful enjoyment of the Claimants' property.
  - (b) Whether the Defendant's action caused damage to the fence wall and the driveway on the Claimants' property.
  - (c) Whether the Defendant committed any acts of malicious damage to the tyre of the First Claimant's vehicle.
  - (d) Whether the Defendant's complaints to state agencies about the Claimants' actions were malicious.
  - (e) Whether the Defendant made any statements which defamed the Claimants.
  - (f) If the Claimants have successfully proven any loss, what is the appropriate award of damages.

## THE WITNESSES

36. At the trial the Claimants gave evidence and they called one other witness namely, Mr Winston Ragoonanan a building contractor. The Defendant alone gave evidence in support of her Defence.

## WHETHER THE DEFENDANT'S CONDUCT INTERFERED WITH THE CLAIMANTS' PEACEFUL ENJOYMENT OF THE CLAIMANTS' PROPERTY

37. In the judgment of **Joe-Ann Glanville and ors v Heller Security Services 1996 Limited**<sup>3</sup> Rampersad J set out the definition of a private nuisance as follows:

“Private nuisance is understood as any ongoing or recurrent activity or state of affairs that causes a substantial and unreasonable interference with a claimant’s land or with his use or enjoyment of that land. Every occupier is entitled to the reasonable enjoyment of his land, and it is well established that an occupier of land may protect himself by action against anyone who allows filth or any other noxious thing produced by him to interfere with this enjoyment.”

38. In **Glanville** Rampersad J referred to the text of **The Law of Nuisance**, in which Murphy J set out the four main factors which help determine whether any given interference is sufficiently substantial to ground an action in private nuisance as:

“The sensitivity of the claimant – concerned with the question of whether the interference is, in objective terms, of sufficient magnitude to warrant a remedy as a claimant who has an exceptional sensitivity to interferences will not be able to rely upon this abnormal sensitivity in order to convert an ordinarily innocuous interference into one that is regarded as sufficiently substantial to ground an action in nuisance.

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<sup>3</sup> CV2013-03429 at paragraph 63

The duration of the harm – the more persistent an interference the more likely the courts will consider it to be substantial.

The extent of the harm – the claimant must show an objectively grave interference but also that she has personally suffered a substantial interference.

The character of the harm – courts seem markedly more prepared to protect the physical integrity of property than minor personal discomforts and annoyances falling short of physical damage<sup>4</sup>

39. At paragraph 71 in **Glanville**, Rampersad J stated:

“Once it has been established that the interference is substantial, the burden of proof rests with the defendant to show the reasonableness of his user which takes into consideration:

The defendant’s motive.

The location of the defendant’s premises which asks whether the defendant is putting his land to a use which is compatible with the main use to which land in that area is usually put bearing in mind that the character of a locality is susceptible to change over time.

The kind of user - extremely dangerous enterprises are unreasonable users of land.

The practicality of preventing or avoiding the interference – whether the defendant, by taking reasonable and practicable steps to prevent the inference could still have achieved his purpose without substantially interfering with the claimant’s use of her land.

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<sup>4</sup> Paragraph 70

The location of the claimant's premises – the claimant's expectations in terms of comfort, peace and quiet will vary according to the location of his house or business; and

The social value of the claimant's use of land as where the claimant uses his land in a socially useful manner, it is seemingly more probable that the court will regard the interference cause by the defendant as unreasonable.

40. **Clerk & Lindsell on Torts**<sup>5</sup> described the approach to be taken in assessing if there is a nuisance as:

“Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case, including, for example, the time of the commission of the act complained of; the place of its commission; the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights; and the effect of its commission, that is, whether those effects are transitory or permanent, occasional or continuous; so that the question of nuisance or no nuisance is one of fact.

**Standard of comfort** A nuisance of this kind, to be actionable, must be such as to be a real interference with the comfort or convenience of living according to the standards of the average man. An interference which alone causes harm to something of abnormal sensitiveness does not of itself constitute a nuisance. A man cannot increase the liabilities of his neighbour by applying his own property to special uses, whether for business or pleasure.” (Emphasis mine)

41. The particulars of nuisance pleaded by the Claimants were that: the Defendant engaged in (a) verbal assaults on the Claimants on numerous occasions by cursing

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<sup>5</sup> 21<sup>st</sup> ed Para 20-10 and 20-11

them ; (b) recording the Claimants' property, vehicle and dogs; (c) playing loud music; (d) throwing stones at the Claimants' dog; and (e) blocking of the wastewater drainage.

42. The Claimants' evidence in their respective witness statements were consistent with the Claimants' pleaded case on the acts of nuisance caused by the Defendant. The Claimants also produced numerous videos which supported their evidence of the high volume at which the Defendant plays music; of the Defendant cursing at the Claimants on numerous occasions; and there was one video of the Defendant's daughter throwing stones unto the Claimants' property.
43. With respect to the blockage of the wastewater line, the Claimants' unshaken evidence was that the Defendant together with her live-in companion Mr David caused the drain to clog by inserting a plastic and foam sealant into the box drain which is accessible from the Defendant's property. Their evidence was that the drain was from the Claimants' laundry and kitchen and the clog was inserted fifteen feet from the exit of the water line accessible from the Defendant's property. The Claimants' evidence was that when the clog was eventually found and ejected the Defendant and her live-in companion were heard laughing loudly. The Claimants also testified that they had to excavate the Claimants' property to find the clog and then eject it from the line and that on the day following the removal of the clog, the Claimants found a boulder inserted in the same water line. In support, the Claimants produced video evidence of the ejection of the boulder from the line. The video also showed that the waste water line was accessible from the Defendant's property as the line empties into the box drain which is opened on the Defendant's property.
44. In cross examination, the First Claimant accepted that while there was no direct evidence that the Defendant blocked the wastewater line, he testified that the Defendant and Mr David were the only persons who had access to it. He also accepted in cross examination that he had not seen the Defendant's live-in companion Mr David place the boulder in the wastewater line, but he stated that Mr David had been present when he removed it and had seemed upset.

45. In cross examination, the Defendant denied that she or with the assistance of Mr David, had intentionally clogged the wastewater line that emanates from the Claimants' sink and washing machine. She agreed that there was a video showing a length of pipe pushing out a clog, but she denied that she had been the one to cause the clog in the line and stated that the Defendant's property is unfenced and anybody could have clogged the drain.
46. The Defendant did not call Mr David, her companion who lives on the Defendant's property to give evidence to support her case and she did not provide any explanation for not calling him as a witness. In my opinion, Mr David was a material witness in refuting the allegations of nuisance made by the Claimants against the Defendant. Her failure to call him without any explanation in my opinion allows me to draw the inference that his evidence would have been averse to or not in support of the Defendant's evidence on this issue.
47. In my opinion, it was more probable that the Defendant and Mr David clogged the wastewater line as they had easy access to it.
48. With respect to the noise from the Defendant's property, the Defendant's evidence was that she did not play music loudly as one of her daughters is autistic and sensitive to loud noise. She relied on a medical report of Dr Prithviraj Bahadursingh which stated that her autistic daughter was affected by loud noise. The Defendant also denied that she cursed the Claimants.
49. However, the videos produced by the Claimants showed otherwise. Again in the absence of any evidence to corroborate the Defendant's evidence and given that the videos produced by the Claimants was cogent evidence that contradicted the Defendant's denial, I am of the view, that it was more probable that the Defendant cursed the Claimants and played music loudly on the Defendant's property which interfered with the Claimants' enjoyment of the Claimants' property.

50. In the circumstances, I am of the view that the Claimants' version of the acts of nuisance committed by the Defendant, namely the cursing of the Claimants, the playing of loud music and the clogging of the waste waterline was more probable as their evidence was unshaken in cross examination and it was supported by contemporaneous video evidence.

**WHETHER THE DEFENDANT'S ACTION CAUSED DAMAGE TO THE FENCE WALL AND THE DRIVEWAY ON THE CLAIMANTS' PROPERTY.**

51. The Claimants' evidence in their respective witness statements which was consistent with their pleaded case was that the Defendant caused damage to their fence wall and driveway by intentionally placing the end of the guttering from the roof of the house on the Defendant's property at the foot of the fence wall and by causing water from her garden hose to also flow to the foot of the fence wall, which has resulted in structural damage to the fence wall and the driveway abutting the said wall. The Claimants also gave evidence that the Defendant failed to construct a drain on her side of the fence wall in order to channel water on the Defendant's property away from the fence wall and into the box drain which was constructed by the First Claimant and the Defendant's ex-husband.

52. The First Claimant's uncontradicted evidence was that he built the fence wall on his side of the drain reserve and commenced construction of the box drain when the Defendant's ex-husband agreed to contribute to the construction of the box drain. The box drain was not completed on the Defendant's side and the Defendant's ex-husband undermined the fence wall during excavation works and was supposed to complete the box drain and repair the fence wall. However, the Defendant's ex-husband failed to build the box drain but rather repaired the fence wall and built a ledge at the base of it. The First Claimant's evidence was unshaken in cross examination. He added that all the water from the Claimants' property runs into the 3 feet wide drain reserve between the Claimants' property and the Defendant's property and he denied that the Defendant's husband assisted in reinforcing the fence wall.

53. The Claimants produced a Cadastral showing the Claimants' property and the Defendant's property which showed a drain reserve between both properties. The Claimants also produced photographs and videos to show that the Defendant left her garden hose with water running at the base of the fence wall causing water to seep through it and run unto the driveway.
54. The Defendant attempted to deny the allegations by stating that she and her live-in companion/spouse made a sort of channel at the fence wall to drain the water away. Her answers to the video evidence of the garden hose running were incoherent and appeared concocted. When confronted with photographs and videos showing the end of her guttering clearly being directed to the foot of the fence wall she tried to convince the Court that, even though the pictures and videos showed that the guttering ended at the foot of the fence wall, the guttering didn't end at the foot of the fence wall.
55. The Claimants also claimed that the Defendant has drilled holes into their fence wall and attached pots and other implements to same from her side of the fence wall. The Defendant has claimed that she has no difficulty removing them and filling the holes.
56. The Defendant's evidence in her witness statement was consistent with her Defence. However, the credibility of her evidence was undermined as she testified in cross examination that the water for all the guttering of the house on the Defendant's property ran underneath the foundation, as there are connecting lines that drain off into one major line. She also testified that the guttering for the shed on the Defendant's property goes downward where the tank is, then across to the house and there are several pipes which are interconnected into one pipe that goes into the drain. She stated that based on the photographs it looked as if the guttering ends there but it does not and the water actually runs underneath through a system set up by her husband and the guy who did the roof. She denied that she has habitually and intentionally allowed her garden hose and her rain water run off to continuously run at the foot of the Claimants' fence wall, penetrating it and causing damage to the Claimants' property. When shown the

video of the hose running and water flowing freely through cracks in the foundation of the fence wall, the Defendant stated that she could not understand how it got up there because the Defendant's property is significantly lower than the Claimants by 10ft. She stated that the beam that was installed on her property also acted as a drain and the water runs against the beam.

57. In my opinion, the Defendant's explanations to deny the Claimants assertions were incoherent. It was more probable that the damage to the fence wall and the driveway on the Claimants' property was caused by the water which came from the guttering on the Defendant's property and the hose which was on, as the videos and pictures taken of the the Defendant's property clearly showed that there is no drainage on that side of the fence wall to channel water away from it. Further, the Defendant's admission that she has no difficulty with removing the pots and other items she had attached to the fence wall and to refill the holes showed that her actions added to the damage to the said wall.

**WHETHER THE DEFENDANT COMMITTED ANY ACTS OF MALICIOUS DAMAGE TO THE TYRE OF THE FIRST CLAIMANT'S VEHICLE**

58. The Claimants' evidence in their witness statements on this issue was consistent with their pleaded case. The Claimants have produced video evidence which shows the Defendant placing her children's bicycles on the roadway to block where the Claimant could park and then she threw some items in the open area where the Claimant would be forced to park. The First Claimant testified in cross examination that on 18 August 2020 he had parked his vehicle on the roadway in front of the Claimants' property and when he returned he discovered thumbtacks in a tyre of his vehicle. He denied that he had parked in front of the Defendant's property and stated that based on where he had parked he was near to the center of the Defendant's property and shed.
59. The Defendant denied that she threw thumbtacks which caused damage to the vehicle of the First Claimant. In cross examination, when the Defendant was

confronted with the video, she claimed she was watching her children ride bicycles and that the items she was throwing was pistachio shells.

60. In my opinion, given the acrimonious relationship between the Claimants and the Defendant at the material time it was less probable that the Defendant took her children's bicycles and placed them on the roadway opposite the Defendant's property and then left her house to throw pistachio shells on the side of the roadway opposite her house, as she could have easily thrown the said shells in a trash bin in her house. In my opinion, it is more probable that the thumbtacks which the Claimant saw on the ground by his vehicle which caused damage to his tyre was thrown there by the Defendant who intentionally left the Defendant's property to do so.

**WHETHER THE DEFENDANT'S COMPLAINTS TO STATE AGENCIES ABOUT THE CLAIMANTS' ACTIONS WERE MALICIOUS**

61. It was not in dispute that the Defendant made several reports to various state agencies namely the EMA, T&TEC and the Town and Country Planning department. The Claimants evidence was that the Defendant threatened to shut down the Claimants' business and that there were numerous visits from persons from those agencies to the Claimants' property and there were investigations. The Claimant also stated that they were able to satisfy each agency that the operations of the Claimants' business were proper.
62. While the Defendant admitted that she made reports to the said state agencies she testified that the said reports were justified due to the noise and fumes which emanated from the Claimants' business and that she suffered loss to her appliances.
63. In my opinion, it is more probable that the complaints made by the Defendant about the operations of the Claimants' business were malicious as none of the state agencies found any fault with same. I am therefore minded to make an order

preventing the Defendant from reporting to any state agency the same complaints about the Claimants' business which she has raised in the past.

**WHETHER THE DEFENDANT MADE ANY STATEMENTS WHICH DEFAMED THE CLAIMANTS.**

64. Seepersad J in **MS v CH**<sup>6</sup> referred to the Canadian case of **Grant and Another v Torstar Corp and Others**<sup>7</sup>, where Mc Lachlin CJ at paragraph 28 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.**)

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<sup>6</sup> CV2020-00493

<sup>7</sup> 2009 SCC61 page 61 at para 28

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.”

65. In the instant case, the Claimants asserted that the Defendant made defamatory statements about them on three occasions, namely 9 September 2019, 12 November 2019 and 18 August 2020. The Claimants gave evidence about the defamatory statements made on those occasions which were consistent with their pleaded case. Their evidence was supported by video recordings and was unshaken in cross examination. Based on the Claimants’ pleadings the statements were slanderous.
66. According to the Claimants’ evidence on 8 September 2019, the Defendant called the First Claimant “bullerman” and the Second Claimant a “hoe”. On 9 September 2019 whilst the Defendant was in front of the Defendant’s property and in the presence of neighbours she called the First Claimant a “bullerman” who liked “boys” and he should spend more time “bulling” his wife than “bulling boys” and she also stated that the Claimants were nasty people who had fired Mr David without paying him properly for his work and they did substandard work using cheap materials.
67. The defamatory statements made on 12 November 2019 were the Defendant called the First Claimant a “bullerman”, she also called the Claimants “crooks doing cheap work for big money” and told the First Claimant to return to the “Chaguanas ghetto where he came from”. In the incident on 18 August 2020, the Defendant called the First Claimant a “bullerman” who liked “boys” and called the Second Claimant a “hoe”(whore) who the First Claimant sent to make “fares”. The Defendant also called the First Claimant a “nasty man” and a paedophile”.
68. Although the Claimants did not plead how the said defamatory words would tend to lower the Claimants’ reputation in the eyes of a reasonable person, in my opinion it is slanderous per se to call the Second Claimant a “whore”; to call the First Claimant a “paedophile”, “a bullerman” “who likes boys”; and to call the

Claimants “crooks doing cheap work for big money”, as those words have a negative effect on the reputation of the First and Second Claimant’s respectively.

69. The Claimants’ unshaken evidence was that the defamatory statements made by the Defendant about the First and Second Claimants respectively on 12 November 2019 was in full view of neighbours and on 18 August 2020 in the presence of the Defendant’s live in companion Mr David and visitors to her home including her family members.
70. Although the Defendant denied using these words she admitted in cross examination when she was shown a video of the incident that she was referring to the Second Claimant when she called her a whore. She also testified in cross examination that the First Claimant installed cameras to look into her children’s rooms.
71. In my opinion, the video evidence corroborated the Claimants’ case that the Defendant uttered the defamatory words. When the videos were presented to the Defendant in cross examination she admitted that she may have said that in the heat of the moment as she was provoked by the Claimants. However, there was no evidence produced in her witness statement that she was provoked to say these utterances. The first time she raised provocation was under cross-examination when confronted with the video evidence. These vile utterances were made in a loud tone in the presence of visitors to the Defendant’s home and in the presence of neighbours.
72. I am also of the view that the Defendant was referring to the First Claimant when she called him a paedophile, as she admitted in cross examination that she stated that the First Claimant had put up cameras that looked into her children room. She was also referring to the First Claimant when she called him a “bullerman who like boys”.
73. Although the Defendant denied making these statements in her witness statement, given her admissions and the video evidence it is more probable that

those statements were made in the presence of other persons apart from the Claimants. Further, the failure by the Defendant to call Mr David as a witness who she lives with and who could corroborate her evidence, means that it is more probable that if he was called as a witness it would not have supported her case on this issue.

74. For these reasons, I am of the view that the words uttered by the Defendant on 9 September 2019, 12 November 2019 and 18 August 2020 were made in the presence of third parties with the intention to inflict significant damage to the family life and reputation of the Claimants.

**IF THE CLAIMANTS HAVE SUCCESSFULLY PROVEN ANY LOSS, WHAT IS THE APPROPRIATE AWARD OF DAMAGES**

75. I have found that the Defendant is liable to compensate the Claimants for damage to the fence wall and the driveway on the Claimants' property; the expense they incurred to clear the clogged wastewater line; the costs to repair the tyre to the Claimants' vehicle; and for the defamatory words uttered about them. The Claimants pleaded special damages for all the claims save and except for the defamation claim where the claim was for general damages. It is settled law that special damages must be specifically pleaded and proved.
76. The Claimants pleaded special damages in the sum of \$20,500.00 as the cost of labour and material to repair the fence wall and the driveway; and the sum of \$50,800.00 as the cost of labour and materials to repair and reconstruct the driveway. The First Claimant's evidence was that he sought an estimate for the costs for repairing the fence wall and the driveway and the estimate he received was in the sum of \$20,500.00. Document A of the Amended Statement of Case was a copy of an undated estimate from D Narine Construction & Ceilingworks which was the estimate. The First Claimant also stated that he obtained an estimate for the costs of breaking the existing driveway to relay the base foundation and to construct the driveway from Mr Winston Ragoonanan which is in the sum of \$50,800.00. He also stated that this sum is in addition to the

estimate to repair the fence wall and the side of the drive way. Document D of the Amended Statement of Case was a copy of said estimate dated 6 April 2021 from Mr Ragoonanan.

77. Mr Ragoonanan's evidence was that he has been a building contractor for over 20 years. He stated that he had no certification and that he was relying on his work experience to make his assessment of the damages for the fence wall and the driveway. He agreed that to date he had not undertaken any formal training or courses that would deem him qualified to make any assessment on building construction issues. He nevertheless maintained that he was in a position to make a viable assessment on the structural and foundational issues relative to the fence wall and the driveway. His estimate was annexed as Document D which was dated 6 April 2021.
78. There was no evidence from the Defendant challenging the sums claimed.
79. While the Claimants have pleaded this as a special damages claim, as it is not an expense already incurred I will treat it as a general damages claim. I am therefore satisfied that the Claimants have proven that they are to be compensated for these sum as this is a loss they have suffered and an expense they will incur.
80. The Claimants pleaded the sum of \$2,000.00 as the costs of labour and materials to repair the clogged wastewater line. The First Claimant gave evidence that it cost \$2,000.00 to repair. Document C of the Amended Statement of Case was a copy of a receipt dated 4 April 2020 which supported his claim for this sum. The Defendant did not challenge the said sum. For this reason I would award this sum.
81. The Claimants pleaded the sum of \$100.00 as the costs of repair to the tyres. The First Claimant gave evidence to support this claim and document B of the Amended Statement of Case supported this claim. I will award this sum.
82. The Claimants claimed damages in the sum of \$50,000.00 for defamation of character in their Amended Statement of Case. However, Counsel for the Claimants in his closing submissions considered an award within the range of

\$85,000.00 and \$150,000.00 for each Claimant was reasonable. In support Counsel relied on the following High Court judgments:

- a. **Amit Alagh v Vijay Ramai et al**<sup>8</sup>. In that case Donaldson-Honeywell J, on 4 July, 2024 awarded nominal damages in the amount of \$60,000.00, inclusive of aggravated damages, plus interest at the rate of 2.5% from the date of service of the Claim. The claim arose from a social media post made about the Claimant.
- b. **Leslie Phleary v Salisha Brizan**<sup>9</sup>. In that case the Court awarded the sum of \$75,000.00 as damages. In that case the Defendant published on Facebook that the Claimant knowingly sold her two cellular phones and refused to reimburse her. She posted that he was a thief and liar and warned persons against buying from him. The Defendant cynically searched for a picture of the Claimant and published it along with the article. Her intent was maliciously to hurt the Claimant's reputation as a business person. There was no award for aggravated damages and I took into account that the Defendant had taken down the post after the Claimant complained.
- c. **CV2020-00493 MS v CH**<sup>10</sup>. In this case, the Claimant had published unfounded allegations against a female police officer of achieving work opportunities in the Police Force based on sexual activity. The Court condemned the defamatory allegations as being demeaning of women based on sexuality in a manner that affects professional integrity and competence. The Claimant was awarded the sum of \$75,000 inclusive of aggravated damages.
- d. **Lasana Liburn v Gordon Pierre**<sup>11</sup>The defamation in this case was on an established online platform. It included serious allegations such as wife

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<sup>8</sup> CV2019-04530

<sup>9</sup> CV2018-03102

<sup>10</sup> CV2020-00493

<sup>11</sup> CV2016-02398

beating, secret non-heterosexual marital infidelity and paedophilia. The Claimant presented evidence that named well-known public officials and persons in the field of sports administration were tagged in the post. The Claimant was awarded \$450,000.00 inclusive of aggravated damages and he received an additional award of \$100,000.00 in exemplary damages.

83. In my opinion, the aforementioned cases can be distinguished from the instant as they concerned defamatory statements which were made on social media platforms while in the instant the defamatory words were uttered in the presence of the Claimants' neighbours, the Defendant's family and persons invited to the Defendant's property. There was no evidence from the Claimant of how many persons heard the defamatory statements made by the Defendant about them. In those circumstances, I am of the view that the extent of the circulation of the defamatory words was limited and not as wide as in the cases referred to by Counsel for the Claimants.
84. In determining an appropriate range of damages, I found the cases of **Horace Broomes v Kwasi Bekoe**<sup>12</sup>; **Indra Roopnarine v Kamahit Bhola**<sup>13</sup>; and **Carl Tang v Charlene Modeste**<sup>14</sup> were more relevant.
85. In **Horace Broomes**, the Claimant was a practising Attorney at Law and the Defendant was a Senior Magistrate presiding in Tobago. The Defendant telephoned the Claimant's brother and told him that the Claimant had received \$6,000.00 from a client but never appeared for and/or represented the client in Court. The Claimant contended that the words spoken by the Defendant in their natural and ordinary meaning was defamatory and meant to disparage him in his profession as an Attorney at Law. On 3 October 2001, the Court held that the statement was defamatory of the Claimant in his profession and awarded him \$10,000.00 general damages as fair compensation for his injured reputation. The said decision was upheld on appeal on 29 July 2003.

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<sup>12</sup> HCA No 211 of 1995

<sup>13</sup> CV2006-01863

<sup>14</sup> CV2010-03657

86. In **Indra Roopnarine**, the Claimant was a business woman and a practising Hindu. The Defendant, also a practising Hindu was a Stenographer II at the Naparima Girls High School as well as the ex-wife of the Claimant's companion and friend. The Claimant claimed against the Defendant for slander committed at the Divali Nagar and an injunction from publishing the slander. The Claimant stated that she had been subjected to abuse and harassment from the Defendant and on one occasion the Defendant had said to her "the hardware close, why you ere bring Byron Gopaul tonight, you jamette."
87. The Claimant contended that these words in their natural and ordinary meaning or by innuendo were defamatory and meant and were intended and understood to mean that she was an unchaste woman. The Claimant also maintained that her reputation had been seriously damaged and that she had suffered considerable hurt, distress and embarrassment as a result. The Court held that the attack on the Claimant's reputation was not as serious as in other cases and the circulation of the slander was limited to some 50 persons at a public function. On 10 November 2010, the Court awarded judgment for the Claimant in the sum of \$25,000.00.
88. In **Carl Tang**, both parties were school teachers at Trinity College, Moka. The Defendant wrote a letter addressed to the Claimant and copied to the principal, vice-principal and the head of department business studies accusing the Claimant of sexual harassment and verbal abuse. The Court found that there was no real evidence or any corroborative evidence that the Claimant suffered serious injury to his character and professional discredit. There was also no evidence that the Claimant lost standing in his professional life or job opportunities. There was no evidence of damage to the Claimant's personal reputation or social standing since the letter was contained within the school circle. The Court, however, found that the Claimant's feelings were injured and he may have suffered some injury to his professional reputation as a result of the letter being copied to at least three work colleagues. The Court also found that the letter was an attack on his personal

integrity and professional reputation, which was serious. On 13 March 2013, the Court awarded the Claimant general damages in the sum of \$18,000.00 for libel.

89. In determining an appropriate range I have taken into account that the award in **Horace Broomes** was in 2003, approximately 23 years ago, the award in **Indra Roopnarine** was made 15 years ago and the award in **Carl Tang** was made 12 years ago. The appropriate range in 2013 may have been between \$10,000.00 to \$25,000.00. However, in 2025 an appropriate range for each Claimant in the instant case is between \$25,000.00 and \$50,000.00. Given the nature of the words used in the slander they were an attack on the Claimants' personal and professional reputation and that there were three separate incidents when the defamatory words were uttered by the Defendant, I award each Claimant the sum of \$50,000.00 as general damages.

#### **ORDER**

90. Judgment for the Claimants.
91. The Defendant to pay the Claimants special damages in the sum of \$2,100.00 with interest at the rate of from 1.25% per annum from the date of loss ie 18 August 2020 to date judgment.
92. The Defendant to pay the Claimants general damages in the sum of \$81,300.00 plus \$100,000.00 with interest at the rate of 2.5 % per annum from the date of service of the claim ie 22 September 2020 until judgment.
93. The Defendant is forthwith restrained from any verbal assaults on the Claimants.
94. The Defendant do cease any disturbance to the Claimants' peaceful enjoyment of their property either by her own acts or those of her family members and other visitors to the Defendant's property.
95. The Defendant do remove all fixtures attached by her to the Claimants' wall and repair all holes made into same.

96. The Defendant do cease and desist from making continued, malicious reports to various state agencies with respect to the operations of the Claimants' business.
97. The Defendant do pay the Claimants prescribed costs in the sum of \$36,510.00.

**/s/ Margaret Y Mohammed**  
**Judge**