

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. P 342 OF 2018

CLAIM NO. CV 2017 OF 00778

BETWEEN

**ANDRE ERROL BAPTISTE
GEM RADIO FIVE LIMITED**

Appellant

AND

BOXU POTTS

Respondent

Panel:

A. Yorke-Soo Hon JA

M. Dean-Armorer JA

M. Holdip JA

Date of Delivery: December 18, 2023

Appearances:

Mr. I. Benjamin SC led Ms. D. Springer instructed by Ms. S. Seenath on behalf of Andre Errol Baptiste and GEM Radio Five Limited Mr. A. Ramlogan SC (absent) led Mr. J. Jagroo instructed by Mr. R. Abdool-Mitchell

I have read the judgment of Dean-Armorer JA and I agree with it.

Alice Yorke-Soo Hon
Justice of Appeal

I have read the judgment of M. Dean-Armorer JA and I too agree with it.

Malcolm Holdip
Justice of Appeal

Delivered by M. Dean- Armorer, J.A.

JUDGMENT

Introduction

1. This appeal challenges the decision of Mme. Justice M. Mohammed (the Judge) to award damages to the Claimant/Respondent, Mr. Buxo Potts in respect of statements which were alleged to have defamed him during live radio broadcasts on three (3) occasions over the period 2012 to 2015.
2. There was no allegation that the alleged statements had been made by either appellant in this appeal. Rather, the Second Appellant, GEM Radio Five Ltd was sued as the employer of the First Appellant, Mr. Andre Baptiste. Mr. Baptiste for his part, was being sued as the publisher of the programme.
3. The issues which arose were whether the statements were defamatory of the Claimant/Respondent, whether Mr. Baptiste acted as a responsible journalist in permitting the airing of the defamatory material, so as to be entitled to the protection of Reynolds privilege and whether the statements in question were fair comments.
4. The Judge dismissed the claim in respect of the first broadcast, on the ground that it was statute-barred. However, she entered judgment for the Claimant in respect of most of the impugned remarks, which were made during the second and third broadcasts.
5. The Judge held that the statements bore meanings which were defamatory of the Claimant. She also rejected the defence of Reynolds privilege and held that the remarks were not protected as fair comment. The Judge awarded general, aggravated and exemplary damages to the Claimant.
6. In the course of this judgment, we considered whether the Judge was plainly wrong. We held the view that she was correct in her assessment of the meanings of the statement, in her rejection of the two defences and in her assessment of damages.
7. Accordingly, we now dismiss the appeal and uphold the findings of the Judge.

Factual Background

8. The First Appellant, Mr. Andre Baptiste regularly hosts radio programmes on Radio I 95.5 FM, under the title “*I Sport*”. He presents himself on these programmes as *The Fearless One* and discusses different genres of sport, including boxing.¹
9. The Appellant, Mr. Buxo Potts was a well-known promoter of the sport of boxing and a special adviser to the Boxing Board of Control.² Mr. Potts also held office as Chairman of the World Boxing Council for Central America and the Caribbean.
10. Between September 6, 2012 and February 15, 2015, Mr. Baptiste hosted three (3) radio programmes on the subject of boxing in Trinidad and Tobago. On each of these programmes, there was a live panel discussion with invited guests, all of whom were involved in the sport of boxing in Trinidad and Tobago. After discussions with his guests, Mr. Baptiste would invite contributions from callers.
11. The first broadcast was aired on September 6, 2012, when Mr. Baptiste hosted Mr. Tariq Abdul-Haqq, who was an accomplished sportsman, and a Commonwealth Games silver medallist in 2010.
12. Because of Mr. Abdul-Haqq’s victory in 2010, there was a public expectation that he would have represented Trinidad and Tobago (TT) at the imminent Olympic Games. During the first broadcast, Mr. Abdul-Haqq explained why he was not competing at the Olympic Games. He made strong remarks against Mr. Potts, including reference to Mr. Potts as “*a cancer*” and “*a hustler*” in a suit. The full text of the first broadcast is set out in the Further Supplemental Record of Appeal and the remarks which were challenged as defamatory are set out in the Amended Statement of Case. They are also set out in Appendix II below.
13. The second broadcast was aired six (6) months later, on March 2, 2013. On this occasion, Mr. Baptiste hosted 3 persons: Mr. Franchot Moore, Mr. Tansley Thompson and Mr. Matthew Noel. They were all deeply involved in the sport of boxing. Mr. Franchot Moore was a former official of the Boxing Board. Mr. Tansley Thompson was a boxing promoter

¹ See the Further Supplemental Record of Appeal at pages 3 and 132.

² established by the ***Boxing Board Act*** ch. 21:52

at the Paragon Sports Club and Mr. Matthew Noel was the owner and coach of a boxing gym in Diego Martin.

14. The second broadcast was held on the eve of a meeting of persons affiliated to a group called the *Friends of Boxing*. The meeting was due to take place two days after the second broadcast and the stated purpose of the broadcast was to raise awareness as to the plight of boxing in Trinidad and Tobago. At the end of the broadcast, Mr. Matthew Noel called on persons, who wanted to see the sport move forward positively, to attend the meeting.
15. During the second broadcast, the participants discussed the role of boxing in the rehabilitation of youths in Trinidad and Tobago. They lamented its decline. In the course of their discussion, they often referred to the involvement of the Respondent, but they also highlighted the neglect by government officials. It is therefore clear from the Transcript that the Respondent was not the only subject of discussion in the second broadcast. He was however often referred to in a negative light. His challenge to some of these remarks had been set out at paragraphs 7, 8 and 9 of his Amended Statement of Case. They include a repeat of statements made by Mr. Tariq Abdul-Haqq during the first broadcast as well as reference to an article in the Express Newspaper about the Respondent being responsible for a young girl being incarcerated in a foreign jail for transporting cocaine.³ The full text of the second broadcast is set out in Appendix II below.
16. The third broadcast was held on the February 15, 2015. On this occasion, Mr. Baptiste hosted four guests, who were all deeply acquainted with the sport of boxing in Trinidad and Tobago. They were Claude Noel, Floyd Trumpet, Mario Robinson and Carlene McCarthy. Claude Noel was an Olympic champion for Trinidad and Tobago. Floyd Trumpet was a former Trinidad and Tobago boxing champion and at the time of the broadcast was involved in the promotion of boxing. Mario Robinson was involved in Amateur Boxing and Ms. McCarthy was involved in boxing through the YANS sporting Academy.

³ The impugned statement is set out in Appendix II below. The substance of the entire second broadcast, was set out in the Agreed Bundle of Documents, which were before the Judge. These were placed before the Court of Appeal in the Further Supplemental Record of Appeal.

17. This broadcast was the least sensational of all. It proceeded at a measured pace, with Mr. Baptiste asking questions and the participants speaking of difficulties with obtaining funding for gyms and generally the promotion of the sport. There was one statement, in the almost one hour long programme, which was under challenge. It was the statement of Mr Claude Noel which alleged that the Respondent was a gambler and a drug addict and was involved in doping horses. See the full text at Appendix II below.
18. The fourth broadcast was part of the programme on February 15, 2015 and it is not immediately apparent why it was treated separately in the claim before the High Court. Nevertheless, the fourth broadcast carried a sensational account by Molly Boxhill, as a call-in contributor, as to her observation with Mr. Potts and young girls. The particulars of these statements were set out in the Amended Statement of Case, they are reproduced in the Further Supplemental Record of Appeal and are also set out in the Appendix II below.
19. Following the broadcasts, Mr. Potts commenced proceedings seeking damages for libel. He also claimed special aggravated and exemplary damages. His claim was directed to four Defendants: Mr. Baptiste and three radio stations, that is to say Citadel Ltd, GEM Radio Five Limited and One Caribbean Media Ltd. The claim against the fourth Defendant, One Caribbean Media Ltd, was withdrawn on June 22, 2017. There was also no dispute that Citadel Ltd operated the concession until October 2012, after which the concession was taken over by the third Defendant for I 95.5 FM was taken over by GEM Radio Five Limited.
20. On September 28 , 2018, the Judge entered judgment for the Claimant and ordered Mr. Andre Errol Baptiste and Gem Radio Five Limited, as the second and third Defendants, to pay \$450,000.00 in general damages, which included an uplift for aggravated damages. The Appellants were also ordered to pay \$100,000.00 in exemplary damages and along with costs as prescribed.

Judgment

21. At the outset the Judge held that the claim in libel in respect of the first broadcast was instituted after the 4 year limitation period and as such was statute-barred under the ***Limitation of Certain Actions Act***⁴. There was no appeal against this finding.
22. The Judge identified the issues before her as being: whether the first, second and third broadcasts bear any defamatory meaning against the Claimant and if so whether the defendants were protected by the defence of fair comment or whether the publications had been made on the occasion of qualified or Reynolds privilege.
23. The Judge held that all of the impugned statements were defamatory. The Judge relied on the authorities of ***Skuse v Grenada Television Ltd***⁵ ***Bonnick v Morris***⁶ and the judgment of the Court of Appeal (Trinidad and Tobago) in ***Kayam Mohammed and Others v Trinidad Publishing Ltd***.⁷
24. She observed that the second broadcast was introduced as concerning the topic of boxing, in respect of which a major event was about to take place. She recounted the manner in which the broadcast proceeded, including questions by the second defendant to guide discussions, telephone calls from listeners and 4 pre-recorded segments, including a recording of the first broadcast, the claim against which was held to have been statute-barred.
25. At paragraph 52, the Judge expressed the opinion that “...*the context of the Second Broadcast was that due to the existing state of professional and amateur Boxing in Trinidad and Tobago a group known as “Friends of Boxing” was convening a meeting on the following Monday for all the stakeholders to attend....*”
26. The Judge held as follows:

“From the contributions made by all the panellist and the pre-recordings, which were strategically, inserted during the discourse by the second defendant the

⁴ Ch. 7:09

⁵ (1996) EMLR 278

⁶ [2001] UKPC 31

⁷ Civ App 118 of 2008

inescapable inference which the ordinary listener would have formed was that the source of all the woes in professional and amateur Boxing was due to the Claimant's involvement...."⁸

27. After examining each phrase carefully to determine their meanings, the Judge held that they would lower the opinion of the Claimant in the mind of right thinking individuals in society.
28. At paragraph 57, the Judge considered the third broadcast and whether it bore any meaning defamatory of the Claimant. On this occasion, the first Appellant, Mr. Baptiste, was once again the host, with our (4) panellist: Mr. Claude Noel, Mr. Floyd Trumpet, a former national boxer, Mr. Mario Robinson, Secretary of Trinidad and Tobago Amateur Boxing Association and Ms. Carlene Mc McCarthy former employee of YANS Academy. Mr. Baptiste also entertained comments from call in listeners.
29. The Judge set out the manner in which each contributor made negative comments against the Respondent and commented on the discussion in this way:

*"The overall discussion in the entire third Broadcast was not about the sport of Boxing in Trinidad and Tobago but it was about the demise of the sport due solely to the Claimant's involvement in aspects which the members of the panel highlighted....[All] of the panellists painted a picture that the Claimant abused his authority as advisor to the Minister to advance his role in boxing..."*⁹

30. The Judge considered the comments of each contributor and identified "*the sting*" in each contribution. In respect of the words of Claude Noel, the Judge held that the comments had the effect of lowering the Respondent in the opinion of right thinking individuals.¹⁰
31. The Judge considered the comments of Molly Boxhill, who was permitted as a call-in listener to make statements about the Respondent. The Judge referred to a caller, who warned Mr. Baptiste against "*blaspheming*" people all over the radio.

⁸ See paragraph 52 of the Judgment

⁹ See paragraph 63 of the Judgment

¹⁰ See paragraph 64 of the Judgment

32. The Judge rejected the Defendant’s contention that the Claimant failed to prove that Ms. Boxhill was referring to him and held that Ms. Boxhill’s words were defamatory. She held that the ordinary listener would have understood the words of Ms. Boxhill to mean that the word “*rumfle*” would suggest some kind of sexual activity and the fact that the girl was crying would suggest that there was some type of abuse.¹¹
33. The Judge proceeded to consider the defence of Reynolds privilege. Having set out the authorities which gave rise to the defence of Reynolds privilege, the Judge considered each of the three Reynolds factors in turn.¹²
34. In respect of the first factor, that is whether the defence was being advanced in respect of matters of public interest, the Judge robustly held that the matters aired in the first, second and third broadcasts were matters of public interest.¹³
35. The Judge tempered her decision by this consideration:
- “...the public cannot and ought not to be interested in such matters where the allegations are unsubstantiated and therefore untrue”¹⁴*
- This view was repeated at paragraph 82, in respect of the third broadcast, where the Judge said:
- “But it cannot be in the public interest to be informed of matters which have not been substantiated”¹⁵*
36. The Judge proceeded to consider whether the inclusion of defamatory material was reasonable. She quoted Lord Hoffman in *Jameel Mohammed v Wall Street Journal Europe SPRL*.¹⁶
37. The Judge held, significantly, that it was only reasonable to include words into the broadcasts if the statements were substantiated and truthful. This finding by the Judge

¹¹ See paragraphs 69 and 70 of the Judgment and Appendix II below

¹² See paragraph 73 of the Judgment

¹³ See paragraph 79, 80 and 82 of the Judgment

¹⁴ See paragraph 80 *ibid.*

¹⁵ See paragraph 82 *ibid.*

¹⁶ *Jameel Mohammed v Wall Street Journal Europe SPRL* [2006] UKHL 44

was severely criticised by Senior Counsel for the Appellant, as being unfaithful to the Reynolds test. This will be addressed in the Discussion below.

38. The Judge then proceeded to consider the factor of responsible journalism. She referred to the non-exhaustive list which should be considered in determining whether there was responsible journalism.¹⁷ The Judge referred, as well, to the guidance provided in *Kayam Mohammed*¹⁸ that the items on the non-exhaustive list were not tests which the journalist had to pass or hurdles which he had to overcome.¹⁹
39. The Judge considered the evidence of the first Appellant, to the effect that he had been engaged in the profession for some 14 years, although he did not hold a qualification as a journalist. She quoted the explanation, which he offered, as to the meaning of responsible journalism as:

“...giving someone the chance to speak the truth and if you have doubts, ask questions by doing research in advance.”

On the basis of answers given by the first Appellant, under cross-examination, the Judge expressed the opinion that he was well aware of his basic duties as a responsible journalist and in particular as a talk show host of a radio programme.

40. The Judge considered each of the Reynolds guidelines. She held that the allegations were serious.
41. In relation to each broadcast, the Judge considered the steps which the first Respondent took to verify the information. She held that the first Appellant had acted responsibly by permitting Mr. Moore in the second broadcast to state that Mr. Potts had acted illegally by being a promoter while being a special adviser to the Boxing Board.²⁰
42. In respect of remaining allegations, the Judge found that Mr. Baptiste made no attempt at verifying the statements which had been made. This was significant, in particular, of the replay of the interview with Mr. Abdul-Haqq, during the second broadcast. In that regard,

¹⁷ See paragraph 85 of the Judgment

¹⁸ Civil Appeal no 118 of 2008

¹⁹ See paragraph 86 of the Judgment

²⁰ See paragraph 98 of the Judgment

the Judge found that the first Appellant's evidence was notably silent as to the steps taken to verify the statements made by Mr. Tariq Abdul-Haqq, as replayed in the second broadcast. The Judge noted that the first Appellant would have had 6 months to verify the information.²¹.

43. As to the reference by Mr. Moore to the contents of a six-year old Express newspaper article, the Judge held that the second defendant should not have permitted Mr. Moore to repeat such a serious allegation knowing that it was not fact- checked.²²
44. The Judge held however , that the first Appellant had acted responsibly in fact checking the allegation that the Respondent was at once an active promoter, while being an advisor to the Boxing Board. Otherwise, however, the Judge held that the second defendant had not done fact checking.²³
45. As to the third Broadcast, the Judge held that the first Appellant knew that the statements of both Claude Noel and Molly Boxhill were defamatory. Nonetheless, he had not fact checked them and he had not, in either case, issued a disclaimer to dissociate himself and the radio station, from the defamatory remarks.
46. The Judge held that there was no urgency in permitting the publication²⁴ and that the views of Mr. Potts were neither sought nor presented²⁵.
47. She held that the tone of the second broadcast was sensational and negative of the Appellant and bordered on ridicule.
48. At paragraph 123 of her judgment, the Judge turned to consider the defence of fair comment. She relied on the definition of the defence as set out by Kokaram JA in *Theodore Guerra v Trinidad and Tobago Publishing Co Ltd*²⁶ and by Mendonça JA in *Ramlakhan v Trinidad and Tobago News Centre* ²⁷.

²¹ See paragraph 99 of the Judgment

²² See paragraph 101 of the Judgment.

²³ See paragraph 109 of the Judgment

²⁴ See paragraph 112 of the Judgment

²⁵ See paragraph 113 of the Judgment

²⁶ CV2007-02612

²⁷ Civ App 30 of 2005

49. The Judge considered whether the Appellants had established the truth of the facts upon which the comments were based. She held that the Defendants had been successful in proving that that Claimant was both an advisor to the Boxing Board and a promoter and that Mr. Moore's comment on the legality of the Appellant holding the position of Special Advisor to the Boxing Board and acting as a promoter was fair. The Judge held that the defence of fair comment had been made out.²⁸
50. The Judge rejected the defence of fair comment in respect of statement by Tariq Abdul-Haqq. She held that these were not comments but imputations of fact. The statements of Mr. Moore, as to the Respondent "*passing the envelope to Mr. Forde*", were not comments but imputations of fact.²⁹
51. The Judge considered the statements of the call-in listener, Molly Boxhill and noted that Ms. Boxhill admitted under cross-examination that she had been referring to the Claimant, in her statements about young girls.
52. The Judge referred to the cross-examination of the Respondent, who admitted that Ms. Boxhill did see him with young girls at the gym late at night and that Ms. Boxhill was making a comment on what she had seen.
53. At paragraph 141, the Judge held that Ms. Boxhill's comments were based on observations which the claimant admitted. The Judge held that Ms. Boxhill's comments were warnings to parents and was protected as a fair comment.³⁰
54. The second part of Ms. Boxhill's statements were, however, treated differently. Ms. Boxhill had admitted in cross-examination, that her depiction of dishevelled looking young girls with a "certain person" was reference to Mr. Potts. The Judge held that by these statements, Ms Boxhill was not making a comment but an imputation of fact. She held therefore that the second part of Ms. Boxhill's statement, that is to say the cause of the condition of the girls were speculative, not proved and nor protected by the defence of fair comment.

²⁸ See paragraph 133 of the Judgment

²⁹ See paragraph 134 of the Judgment

³⁰ See paragraph 141 of the Judgment

55. The Judge held that Mr. Baptiste was liable since he permitted defamatory words to be aired.³¹
56. She then considered whether the first Appellant alone should be liable, or whether the Radio Station, Gem Radio Five Ltd was also liable. The Judge noted that the third Defendant, Gem Radio Five Ltd. had taken over the concession for Radio I 95.5 FM from October 15, 2012 and held the concession in 2013 and 2014 when the second and third broadcasts were aired. There was no dispute that the first Appellant was the employee of the radio station.³²
57. The Judge proceeded to address the issue of damages. No award of special damages was made.
58. As to general damages, the Judge considered comparable cases and made award of \$450,000.00 in general and aggravated damages and \$100,000.00 as exemplary damages. She ordered the Defendants to pay costs as prescribed in the sum of \$75,250.00.

The Appeal

59. On October 31, 2018, the Appellants appealed. They sought to set aside the orders of the Judge. They advanced five main grounds which in summary were that the Judge erred in holding that the statements in question were defamatory of the Claimant /Respondent; that the Judge erred in holding that the statements were not protected by Reynolds privilege or as being of fair comment. The Appellants also averred that the awards of damages were inordinately high and that the Judge was wrong in her decision not to apportion costs. The full grounds of appeal are set out below in Appendix I.

Submissions on Appeal

Submissions for the Appellant

60. Mr. Benjamin, learned Senior Counsel for the Appellants presented written and viva voce submissions. He challenged three aspects of the Judgment. His challenges were that the impugned words had been taken out of context and were not defamatory; that the broadcasts were, contrary to the finding of the Judge, protected by the defence of Reynolds

³¹ See paragraph 146 of the Judgment

³² See paragraph 145 of the Judgment

Privilege; that the broadcasts were honest or fair comment and that the Judge's award of damages was inordinately high.

61. As to the first issue, that is to say, the "meaning issue", Mr. Benjamin relied on *Stocker v Stocker*³³, and submitted that the Judge had insufficient regard to the context in which the broadcasts had been made. The significant contextual event, in the Appellant's Submission, was the stakeholder meeting which has been carded to take place two days after the second broadcast.
62. Mr. Benjamin contended further that the Judge overlooked the factual context that the broadcast was "*a public appeal to the Minister of Sport....to appoint a boxing Board and to intervene in the current poor state of boxing....*"³⁴
63. There was also, according to the Appellant, the broader context of the lack of progress in the sport of boxing in the two (2) years preceding the broadcast.
64. Mr. Benjamin submitted that the Judge fell into error because of her over-literal and overly analytical approach, which was abstracted from the context, and was contrary to the learning in *Stocker*.³⁵ Mr. Benjamin also argued that the Judge failed to determine the natural and ordinary meaning of the words as spoken.
65. In respect of the second broadcast, Mr. Benjamin argued that the Judge overlooked the fact that the broadcast was part of an on-going public conversation, having regard to the fact that it was a replay of an earlier broadcast.³⁶
66. The Appellant also challenged the Judge's finding on fair comment. The Appellant conceded that the Judge properly identified the principles governing the defence of fair comment. However, Mr. Benjamin identified 4 grounds on which the Judge fell into error. He argued that the Judge failed in the following ways :
 - a. to identify and consider the public interest component of the material
 - b. to keep a clear distinction between comment and an imputation of fact.

³³ [2019] UKSC 17

³⁴ See paragraph 23 of the written submissions for the Appellant.

³⁵ *Stocker* [2019] UKSC 17

³⁶ See paragraph 37 of the written submissions for the Appellant

- c. to identify the facts upon which the comments were based.
- d. to identify the honestly held views of the maker of the statements.³⁷

67. Addressing the subject of Reynolds privilege, Mr. Benjamin contended that the Judge was plainly wrong in holding the Appellants did not have the defence available to them.

68. Mr. Benjamin set out the three limbs of the Reynolds Privilege that is to say that the subject matter must be in the public interest, that it was reasonable to include the defamatory material in the publication and that the publisher met the standard of responsible journalism.³⁸

69. On this basis, Mr. Benjamin submitted that the Judge fell into error in these ways:

- by misdirecting herself as to the first two limbs of the defence
- by applying a test of responsible journalism in a rigid and inflexible manner
- and by attaching insufficient weight to the evidence of the first Appellant that the information had not emanated from him and that he had not accepted the comments as his own.³⁹

70. In particular, Mr. Benjamin contended that the Judge was wrong in stating that unsubstantiated allegations were not in the public interest. Continuing his argument, Senior Counsel argued that the truth of the statements was irrelevant according to the learning in *Jameel*⁴⁰.

71. Mr. Benjamin relied on *Jameel*⁴¹ in support of the submission that the Court should not usurp the editorial judgment of journalists.⁴² He contended that the Judge failed to give any weight to the professional judgment and experience of the journalist.

72. He argued that the Judge adopted an inflexible and impractical approach to the guidelines of responsible journalism and that this was contrary to the learning in *Jameel*.

³⁷ See paragraph 48 of the Appellants' submissions

³⁸ See paragraph 73 of the Appellants written submissions

³⁹ See paragraph 74 of the Appellants written submissions

⁴⁰ *Jameel (Mohammed) and Another v Wall Street Journal Europe* [2007] 1 AC 539

⁴¹ *Jameel (Mohammed) and Another v Wall Street Journal Europe* [2007] 1 AC 539

⁴² See paragraph 81 of the Appellant's submissions

73. According to the Appellants, the Judge was also wrong to give the words their full range of meaning and to regard all allegations as being serious.⁴³
74. Mr. Benjamin argued that the Judge was wrong in failing to assess the urgency of and timing of the circumstances of the broadcasts and in her assessment of the significance of verification of the content of the statements. Significantly, it was his submission, that the Judge failed to attach sufficient weight to the Appellant's evidence that the information did not emanate from them and that they had not accepted it as their own.
75. The Appellants underscored the close connection of guests and callers to the field of boxing and for this reason, the broadcast as reliable. Citing *Jameel*⁴⁴ and *Flood*⁴⁵, the Appellants argued that the Judge improperly understood the Appellant's verification obligation.⁴⁶
76. In their submission, the broadcaster was required only to honestly and reasonably believe that the statements were true.⁴⁷
77. The Appellant alluded to the evidence that the Respondent was under an investigation and submitted that the Judge was wrong to conclude that the allegations were not subject to investigation.
78. The Appellant's submitted in the alternative that the award of damages was inordinately high. In respect of general damages, it was contended that the Respondent had failed to provide any evidence in support of the extent of the publication as well as the impact on his reputation feelings and career and as such he was entitled to no more than nominal damages.⁴⁸
79. The Appellants invited the Court to hold that the instant case was not appropriate for an award of exemplary damages.

⁴³ See paragraph 88 of the Submissions of the Appellant.

⁴⁴ *Jameel* (2007) 1 AC 359

⁴⁵ *Flood* (2012) 2 AC 273

⁴⁶ See paragraph 104 of the Appellants submissions

⁴⁷ Paragraph 105 of the Appellants' written submissions

⁴⁸ See paragraph 150 of the Appellants' Written Submissions

*Submissions for the Respondent*⁴⁹

80. Mr. Ramlogan, Senior Counsel for the Respondent began his written submission by reiterating the principle that an Appellate court would not interfere with the decision of trial judge unless it is shown to have been plainly wrong.
81. As to ‘meaning issue’, the Respondent submitted that the Judge was not plainly wrong according to the test in *Skuse v Grenada*.⁵⁰
82. Mr. Ramlogan alluded to the argument that the Judge failed to give sufficient weight to the context in which the statements were made and in particular to the context of a public appeal to the Minister of Sport and the Government to intervene in the poor state of boxing in Trinidad and Tobago. In answer, Senior Counsel denied that there was evidence of a public appeal. He stated that while the second broadcast may have referred to other issues, the publication, in large part, was geared to criticising Mr. Potts.
83. As to the criticism that the Judge adopted an approach which was too analytical, as frowned upon in *Stocker*⁵¹, Mr. Ramlogan sought to distinguish *Stocker*. He also emphasised that the cited authority warned against disturbing findings of the trial Judge as to meanings of alleged defamatory statements, since these were finding of fact.⁵²
84. As to the third broadcast, the Respondent contended that the Judge was correct to hold that the words of Claude Noel and Molly Boxhill were defamatory.
85. Turning to the issue of Reynolds privilege, Senior Counsel argued that the Judge had correctly, identified the appropriate authorities and had correctly concluded that the matters raised were of public interest.
86. Senior Counsel proceeded to consider the Judge’s ruling on each factor on the non-exhaustive list, as set out in *Reynolds*.
87. Similar submissions were made on the issue of fair comment. At paragraph 71 of his written submissions, Mr. Ramlogan argued that the Judge was correct in holding that the defence

⁴⁹ Written Submissions filed on March 24, 2022

⁵⁰ *Skuse v Grenada Television Ltd (1996) EMLR*

⁵¹ [2019] UKSC 17

⁵² See paragraph 18 of the Written Submission filed on behalf of the Respondent on March 24, 2022

of fair comment was available for one aspect of the second broadcast, that is to say that Mr. Potts had been acting illegally while being both a promoter and a special adviser to boxing board. Mr. Ramlogan asserted that in all other respects the Judge was correct in holding that the statements were facts and not comments.

88. As to damages, Senior Counsel, set out the authorities on the subject and argued that if the words complained of were found to have been defamatory, there was no question that Mr. Potts would have been entitled to general damages. He relied on the authorities of *Conrad Aleong v Trinidad and Tobago Express*⁵³.
89. Senior Counsel argued that the most important factor was the gravity of the libel and that in the case at hand, the defamatory words concerned the integrity of Mr. Potts and portrayed him as a corrupt person and a sexual predator and a drug user.
90. At the hearing of the appeal, the Respondent was represented by Mr. Jagroo, who amplified the written submissions of Senior Counsel.

Discussion

91. Four issues arise for the determination of the Court of Appeal. They will be referred to as:
 - The meaning issue
 - The issue of Reynolds Privilege
 - The issue of fair comment
 - The issue of damages

The Meaning Issue

92. The Appellants contend that the Judge was plainly wrong in her finding that the words, in respect of which the Respondent has instituted proceedings, were defamatory of him.
93. Significantly, the Appellants do not contend that the Judge was wrong in her statement of the law or in her identification of the principle of identifying single meaning of the words.⁵⁴

⁵³ Civ Appeal No.122 of 2009

⁵⁴ See Stocker *ibid* at paragraph 34, where Lord Kerr said “ it is clear that the single meaning approach is well entrenched in the law of defamation “

Rather, the Appellants contend that the Judge gave insufficient weight to the context in which the statements were uttered.

94. We considered the definition in law of defamatory remarks. The essence of a defamatory statement is its tendency to injure the reputation of another person.⁵⁵ While there is no complete definition of the term “*defamatory*”, generally speaking, a statement is defamatory of the person of whom it is published if it tends to lower him in the estimation of right thinking members of society generally.⁵⁶ Further, statements may be defamatory if they expose a person to public ridicule or contempt or causes him to be shunned or avoided.⁵⁷
95. In order to determine whether the statements in question are defamatory, it falls to the trial Judge to assess their meaning. This is a question of fact.⁵⁸ And the trial Judge is tasked to determine the natural and ordinary meaning which would be conveyed to the ordinary reasonable reader.⁵⁹
96. The characteristics of the notional reasonable reader were identified in *Skuse v Grenada Television Ltd [1966] EMLR 278*. In that case, Sir Thomas Bingham said:

“....the ordinary reasonable reader is not naïve; he can read between the lines but he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other non-defamatory meanings are available....”

Sir Thomas Bingham held further:

*“The Court must read the article as a whole and eschew an over-elaborate analysis....”*⁶⁰

97. The trial Judge is often required to look behind the literal meaning of the words and consider the implication or the inference that the ordinary reasonable reader would draw

⁵⁵ See Halsbury’s Law of England Volume 32 (2023)

⁵⁶ See *Sim v Strech* (1936) 2 ALL England Report 1237

⁵⁷ See *Partimer v Coupland* (1840) 6 M and W 105 and *Youssoupoff v Metro Golden Mayer* (1934) TLR 581

⁵⁸ See *Stocker v Stocker*

⁵⁹ See *Bonnick v Morris*

⁶⁰ See this passage quoted by Mendonca JA in *Kayam* at paragraph 10

from them. In this regard, Lord Reid in *Lewis v. The Daily Telegraph* [1964] A. C. 234 had this to say :

*“ Sometimes it is not necessary to go beyond the words themselves , as where the plaintiff has been called a thief or a murderer . But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of the natural and ordinary meaning ... ”*⁶¹

98. A trial Judge in determining the meaning of words must also have regard to the context in which the alleged defamatory remark had been made . The importance of context was considered extensively in *Stocker v Stocker*, which was a decision of the UK Supreme Court.⁶²
99. In *Stocker v Stocker*, their Lordships considered a Facebook message by a former wife that her husband had tried to “to strangle” her. The husband sued the former wife in defamation. Lord Kerr , who delivered the judgment with which the other Law Lords agreed , examined the role of an appellate court in respect of the findings of the trial Judge as to the meaning of alleged defamatory remarks and held that the Appellate court should exercise “*disciplined restraint*”, in determining the correctness of the trial Judge’s assessment of the meaning of words.⁶³ We have set out the words of Lord Kerr , which we regard as a road map in assessing the findings of the Judge as to the meaning of words in question. His Lordship had this to say :

“ As to whether the appellate task needs to be described as one requiring caution, as Simon LJ suggested, I am doubtful. I would prefer to say that it calls for disciplined restraint. Certainly, the trial judge's conclusion should not be lightly set aside but if an appellate court considers that the meaning that he has given to the statement was outside the range of reasonably available alternatives, it should not be deterred from so saying by the use of epithets such as “plainly” or “quite” satisfied. If it was vitiated by an error of law then the appellate court will have to choose between remitting the matter or, more usually in this context, determining

⁶¹ [1964] AC 234 at 258

⁶² [2019] UKSC 17

⁶³ See paragraph 59 of *Stocker*

the meaning afresh. But if the appellate court would just prefer a different meaning within a reasonably available range, then it should not interfere.”

100. Their Lordships, in *Stocker*, held that the Judge at first instance was wrong to apply the dictionary definition of “*strangle*” and held that the use of a dictionary definitions to confine the possible meanings of the facebook post involved an error of law and on this basis , the Court of Appeal needed to approach the question of meaning afresh.⁶⁴
101. Lord Kerr, in the course of his judgment alluded to the importance of “context” and quoted Simon LJ in *Bukovsky v Crown Prosecution Service [2017] EWCA Civ 159* as saying that an important principle included the context and circumstances of the publication.⁶⁵
102. Lord Kerr proceeded to consider the context of a Facebook publication and expressed the view that a Facebook post “...*was in the nature of conversation rather than carefully chosen expression, and that it is pre-eminently one which the reader reads and passes on .*”⁶⁶
103. We proceed therefore to consider the context of the publications in this appeal and whether the Judge failed to pay sufficient regard to that factor.
104. The context advocated by Senior Counsel Mr. Benjamin was that there was a public appeal to the Minister and the Government as to the state of boxing in Trinidad and Tobago. An examination of the transcript, which was produced in the Agreed Bundle before the Judge, bears out such context. Indeed, each broadcast reflected the concern of stakeholders for the state of boxing. Indeed, other causes were identified for the demise of boxing, not the least of which was the Minister of Sport himself. The broadcast praised boxing as a sport and as an avenue for rehabilitating fallen young people. In our view however, when the broadcasts are considered as a whole, it was clear that the Respondent was being identified as the underlying cause of the demise of boxing, in the years immediately preceding the broadcasts.

⁶⁴ Ibid at para 60.

⁶⁵ See paragraph 39 of *Stocker*

⁶⁶ See paragraph 43 *supra*

105. Even taking into account the fact that the subject of each broadcast was boxing and not the Respondent, it is our view that the meaning, which would be understood by the notional reasonable listener, would not be thereby altered.
106. The learned Judge meticulously considered the meaning of each phrase, particularly in the context of Trinidadian and Tobagonian listenership. She considered the meanings that would be received by a Trinidadian audience of terms, which were used in the recording of the interview of Mr. Abdul-Haqq in the second broadcast. We agree that the description of Mr. Potts as a “cancer”, a “hustler in a suit” carries a defamatory meaning. We agree that the reference in the second broadcast to an article in the Express newspaper carried the defamatory meaning that Mr Potts was instrumental in having the young lady in question transport drugs to a foreign jurisdiction. In like vein, the prediction that Giselle Salandy would be like “*a dog with mange*”, would be clearly conjure in the minds of a TT listenership a despicable skin disease suffered particularly by stray dogs. The statement would be understood to mean that the association of Giselle Salandy with Mr Potts would reduce her to a pathetic and despicable condition.
107. As to the third broadcast, the words of Claude Noel were clear reference to drugging of horses and using drugs himself. The Judge considered the words of Molly Boxhill in the fourth broadcast. She considered the meaning of the term “rumfle” as stated by Ms. Boxhill, “rumfle” being a quintessentially Trinidadian word. We agree that the picture painted by reference to a crying young girl, who was “*rumfled up*” would be understood by a TT listener suggest that the girl was the victim of unwanted sexual activity. The Judge ascribed meanings which would be received by the notional reasonable listener in Trinidad and Tobago.
108. Exercising disciplined restraint, it is not our view that the decision of the Judge as to the meanings should be set aside. Her findings as to the meaning of the words were not in error of law, as found by the Supreme Court in *Stocker*. Further, they were not beyond the range of reasonably available meanings. Consequently, we find ourselves restrained from interfering with her decision.

Reynolds Privilege

109. We proceed to consider the second issue, that is to say, whether the Defendants are protected by Reynolds Privilege, which is a policy defence, providing for the protection of freedom of expression and the freedom of press. The Court of Appeal examined the defence of Reynolds privilege in ***Kayam Mohammed and Others v Trinidad Publishing and Others***.⁶⁷ In that case, Mendonça JA, with whom Stollmeyer and Jamadar JJA agreed, traced the history of the defence, noting that, it derives its name from the case of ***Reynolds v Times Newspapers Ltd. and others***⁶⁸ and that it was built on the traditional foundation of qualified privilege which required a mutual duty and interest between a publisher and a recipient of the information.⁶⁹

110. Mendonça JA noted that Reynolds offers a complete defence, but protects a publication, which, though defamatory and untrue is directed to the public at large, or a section of it. In order to attract the defence of Reynolds privilege, the publisher must show that (1) it was in the public interest that the information should be published and (2) where the publisher has acted responsibly.⁷⁰ The last factor is termed “responsible journalism”.

111. In ***Reynolds***, Lord Nicholls set out a non-exhaustive list of considerations which may be of relevance in deciding whether the publisher met the test of responsible journalism.

112. The non-exhaustive list was set out by the Judge. They are:

“1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. 2) The nature of the information, and the extent to which the subject matter is a matter of public concern. 3) The source of the information. Some journalists have no direct knowledge of the event. Some have their own axes to grind, or are being paid for their stories. 4) The steps taken to rectify the information. 5) The status of the information. The allegation may have been

⁶⁷ Civil Appeal No. 118 of 2008

⁶⁸ [2001] 2 A.C. 127

⁶⁹ Ibid at paragraph 59 of the Judgment of Mendonça JA

⁷⁰ Ibid, per Mendonça JA, at paragraph 60

the subject of an investigation which commands respect. 6) The urgency of the matter. News is often a perishable commodity. 7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. 8) Whether the article contained the gist of the plaintiff's side of the story. 9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as 'including the timing.'

113. The House of Lords in ***Jameel and others v Wall Street Journal***,⁷¹ and the Privy Council in ***Bonnick v Morris***,⁷² held that the non-exhaustive considerations were meant to be broad based pointers and were not tests that the publisher was required to pass or hurdles for him to overcome. Rather, the standard of responsible journalism is required to be applied in a practical and flexible way.⁷³ In determining the issue of responsible journalism, the Court is required to accord deference to the editor. In the words of Lord Bingham in ***Jameel*** (supra):

*"... weight should ordinarily be given to the professional judgment of an editor or journalist in the absence of some indication that it was made in a cavalier, slipshod or careless manner."*⁷⁴

114. In the round, the defence of Reynolds Privilege is made available in the public interest. It has been recognized that it is not in the public interest for publications to be made in the absence of reasonable steps of verification. At paragraph 32 of his judgment in ***Jameel***, Lord Bingham said:

"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 [in the Reynold's case at p. 238], no public interest is served by publishing or communicating misinformation. But the publisher

⁷¹ ***Jameel and others v Wall Street Journal Europe Sprl*** [2006] UKHL 44

⁷² ***Bonnick v Morris*** [2002] UKPC 31

⁷³ See Mendonça JA, in **Kayam Mohammed and Others v Trinidad Publishing and Others Civil Appeal No. 118 of 2008**, at paragraph 63

⁷⁴ See Lord Bingham in **Jameel and others v Wall Street Journal**, at paragraph 33

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.”

115. It is clear therefore that Reynolds privilege was designed to meet the public interest in facilitating freedom of publications on matters of public concern. It is built on the recognition that it would be contrary to the public interest to suppress the freedom of publishers.

116. The defence is however limited by the requirement of verification, since it is not in the public interest to place before the public, material which the publisher has not taken reasonable steps to verify. See Mendonça JA, at paragraph 61 of *Kayam*.

117. It is to be observed that responsible journalism does not require justification. It does not require the defendant to prove the truth of the publication. The journalist however, must take reasonable steps to ensure that the information is accurate.

Applying the learning

118. The Judge correctly set out the authorities on the defence of Reynolds privilege. She was however severely criticized by Senior Counsel for applying the incorrect test. Senior Counsel submitted that there was no duty to verify. She was also criticized for her overly analytical approach to the Reynolds factors.

119. It is therefore necessary to examine what the Judge had to say. The judge dealt with the defence of Reynolds privilege from paragraphs 71 to 122 of her written judgment. The Judge found one statement protected by Reynolds privilege, that is to say, in respect of the statement in the second broadcast, attributed to Mr. Franchot Moore that Mr. Potts was a promoter of boxing while being special advisor to the Boxing Board.⁷⁵

120. Significantly, the Judge stated that it was not the duty of the journalist “*to fact-check every minute detail*”.⁷⁶ In our view, this demonstrated the Judge understood that in

⁷⁵ See paragraph 97 of the Judgment

⁷⁶ *Ibid*

considering the defence of Reynolds privilege, she was not required to find that defamatory material was justified.

121. At paragraph 84 however, the Judge stated that it could only be reasonable to include the words complained of, if the words were substantiated and truthful. This was however her commentary on the law and was not a finding of hers and was not the basis of any of her findings. She proceeded to consider the factors of responsible journalism.
122. The Judge did in fact undertake a detailed examination of each factor, as each related to the words of the second and third broadcast. This method was indeed contrary to the direction of their Lordships in *Bonnick* (supra), at paragraph 24 and *Jameel* (supra), at paragraph 56. Whether this resulted in her being plainly wrong will be considered below.
123. The Judge considered the second part of the second broadcast, that is to say, the pre-recorded segment of an interview with Mr. Tariq Abdul- Haqq. The Judge noted that the defamatory statements that the Respondent was a cancer, causing irreparable damage to the sport of boxing and that he was a hustler in a suit, had been made six (6) months before the second broadcast. There would have been more than enough time for the first Appellant to fact-check the basis on which the statements were made.
124. We are of the view that the Judge was correct to find that the replaying of the first broadcast fell short of the test of responsible journalism. We reckon that a responsible journalist would have appreciated the seriousness of the statements and before reproducing them verbatim, could have investigated them, even by allowing Mr. Potts himself to comment. In our view, Mr. Baptiste was blatantly irresponsible in this regard and the Judge cannot be faulted in holding that he was not protected by Reynolds privilege.
125. The Judge proceeded to consider the third group of defamatory statements that is to say, Mr. Moore's envisioning Mr. Potts passing "an envelope" to Mr. Forde, another official. Although this was not a statement of an event which had already occurred,

in our view it would be appreciated by the notional reasonable listener to suggest that Mr. Potts was the kind of person who would engage in corrupt activity.

126. The third group included Mr. Moore's reference to a newspaper article suggesting that Mr. Potts was responsible for the incarceration of a girl in a foreign jail for the transportation of drugs. The Judge held that there was no verification by Mr. Baptiste of the defamatory statements.

127. It is clear in our view that the Judge did not apply the standard of justification. Her finding was that Mr. Baptiste took no steps to verify the allegations. Even if Mr. Baptiste did not have the facility of time to fact check, it was open to him to warn Mr. Moore of the seriousness of the allegation. In fact Mr. Baptiste had done this on at least one other occasion during the second broadcast. He could have required production of the article and could have dealt with it at a subsequent airing of I Sport. Instead Mr. Baptiste allowed these statements to proceed unchecked, not disassociating himself from them and allowing his listeners to accept them with no caution.

128. The Judge moved onto the third broadcast. She identified the two defamatory statements. The first was the statement by Mr. Claude Noel that while the Respondent worked at the Paddock, he was a drug user and that he was involved in doping horses. The remark also meant that he had a gambling habit and had been fired for using drugs and doping horses. The second part of the broadcast was the sensational offering of Molly Boxhill. Of this, the Judge held that Mr. Baptiste had failed to fact check, failed to issue any warning and had failed to disassociate himself from the remarks.

129. We find no fault with the Judge's assessment. She took into account the responses of Mr. Baptiste under cross-examination, where he admitted that he had not informed his listeners that the views expressed were those of Mr. Noel and Ms. Boxhill. She reiterated at paragraph 109 that it would not be expected that every minute detail would be verified, which again demonstrates that she was not employing the standard of justification.

130. We therefore hold that the Judge was correct in holding that the first Appellant simply permitted publication of defamatory statements, without responsible caution. He was reckless and could not avail himself of the defence of Reynolds's privilege. By extension the Second Appellant as his employer was also vicariously liable.

131. It is true that the Judge conducted a meticulous assessment of each consideration listed in *Reynolds*. We hold the view, however, that that fault was *de minimis* and did not render her decision plainly wrong. It is clear that when the Judge made her final decision, she considered broadly the issue of whether the first Appellant had acted responsibly. We therefore hold that she was correct and the appeal in respect of the Reynolds' privilege should be dismissed.

132. In respect of all three broadcasts, the first Appellant issued no disclaimer. In our view, it was not enough for the first Appellant to rest on his silence and non-acceptance of the statements. As a responsible journalist he should have taken the further step of positively dissociating himself and the radio station from the remarks.

The Defence of Fair Comment

133. The Judge proceeded to consider whether the Appellants were entitled to rely on the defence of fair comment. The Judge quote extensively from the judgment of *Kokaram J in Theodore Guerra v Trinidad Publishing Co. Ltd*⁷⁷ as to the general philosophy underlying the defence, which essentially protects comments on matters of public interest.

134. In order to invoke the defence, it is necessary to establish 6 elements:

- a) The comment must be on matter of public interest,
- b) The comment though it can consist of or include inferences of fact, must be recognizable as a comment, as distinct from an imputation of fact,
- c) To this end, it is generally necessary that the words complained of should explicitly or implicitly indicate at least in general terms the factual basis for the comment.

⁷⁷ CV 2007-02612

- d) The comment must be based on facts which are true or protected by privilege,
- e) The comment must be one which an honest person could have made on proved facts,
- f) Even though the comment satisfies these objective criteria, the defence can be defeated if the Claimant proves that the defendant was actuated by express malice⁷⁸

135. Once again, the Judge meticulously examined each of two broadcasts to determine whether they consisted of fair comments. She held that the statements of Franchot Moore was a fair comment on the fact that the Respondent held the position of special adviser to the Boxing Board while being a promoter of boxing.

136. The Judge also found a fair comment in one aspect of the tirade by Ms. Boxhill, as a call-in contributor to the third broadcast. This was in relation to Ms. Boxhill's observation that she saw the Respondent with young girls late at night and her comment consisted of a warning to parents of young girls.

137. Of the outburst by Tariq Abdul-Haqq however, as replayed in the second broadcast, the Judge held a different view. She held that the words Mr. Abdul-Haqq were imputations of fact and not comments. Her view was the same of the speculative remark that Mr. Potts would pass an envelope to Mr. Forde as well as Ms. Boxhill's account of the "rumpled" young girl. See Appendix II for the full text of the alleged defamatory remarks.

138. In so far as the Judge held that imputation of facts were not protected as comments, she was correct. The difference between a comment and a statement of fact was explained by Mendonça JA with admirable clarity in *Rajnie Ramlakhan v Trinidad and Tobago News Center Ltd and Ramjohn Ali*⁷⁹. At paragraph 20 of his judgment, Mendonça JA had this to say:

"To fall within the defence of fair comment the comment must be recognized by the ordinary reasonable reader as comment as distinct from an imputation of fact."

⁷⁸ Duncan and Neil on Defamation (3rd Ed) paragraph 13.07

⁷⁹ See Civ App 30 of 2005

At paragraph 21, Mendonça JA noted that whether the words satisfied the test depended on their context. He had this to say:

“Whether the words satisfy the test depends on the context in which they are used. In Myerson v Smith’s Weekly Publishing Co. Ltd. (1923) 24 N.S.W.S.R 20, 26 Ferguson, J cites the following example.

“To say that man’s conduct was dishonourable is not comment, it is a statement of fact to say that he did say certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment”.

139. Then at paragraph 22, Mendonça referred to ***Gatley on Libel and Slander***, and said:

“In Gatley on Libel and Slander supra, (at para 12.7) it is said the key to whether a defamatory statement is recognisable by the ordinary, reasonable reader as comment is whether it is supported by facts upon which the comment may be based. The example given by Ferguson J. referred to earlier is an example of this. The following example is also given in Gatley (at para 12.7)

“To write of someone that he is “a disgrace to human nature” is a defamatory allegation of fact. But if the words were, “He murdered his father, and therefore is a disgrace to human nature,” the latter words appear from the context to be merely comment.”

As was said in O’ Brien v Salisbury (1889) 54 J.P 215, 216:

“It seems to me- as, indeed, I suggested during the argument- that comment may sometimes consist in the statement of a fact, and may be held to be comment if the fact so stated appears to be a deduction or conclusion come to by the speaker from other facts stated or referred to by him or in the common knowledge of the person speaking and those to whom the words are addressed, and from which his conclusion may be reasonable inferred. If a statement in words of a fact stands by itself naked, without reference, either expressed or understood, to other antecedent or surrounding circumstances notorious to the speaker and to those to whom the words are addressed, there would be little, if any, room for the inference that it was understood otherwise than as bare statement of fact and then if untrue there would be no answer to the action: but if although stated as a fact it is preceded or

accompanied by such other facts, and it can be reasonably based upon them, the words maybe reasonably be regarded as comment, and comment only , and if honest and fair, excusable;”

140. Mendonça JA, also held that in Trinidad and Tobago, the law of as to fair comment is still governed by the common law and it is necessary for the defendant to prove all allegations of fact.

141. Applying the learning set out above, we reckon that the Judge was correct in her assessment of whether the defence of fair comment as applied to the second and third broadcasts. The Judge rejected the defence of fair comment in respect of Molly Boxhill’s remarks, that Mr. Potts was seen with a young lady who was “ramfled” up. This was a bare statement of fact, not having any other antecedent fact to support why it was said.

142. The same may be said of the comment by Claude Noel, as to the Respondent being involved in drugs and gambling and doping of horses as well and the reference by Mr. Moore to the extract from the Express newspapers, in the 2nd Broadcast.

143. In our view however, the statements of Mr. Abdul-Haqq consisted of comments. He had set out statements of fact as to what he perceived Mr. Potts had done to him, in failing to provide financial assistance for his trips abroad and for his injuries. The remark that the Respondent was “a cancer” was based on that statement of fact.

144. This does not however imply that the defence of fair comment applies. In order to avail themselves of the defence, the Appellants would have been required to prove that the words of Mr. Abdul-Haqq were true. There was no attempt on their part so to prove. Accordingly, we agree with the Judge that the replay of Mr. Abdul-Haqq’s statements cannot be regarded as fair comment.

Damages

145. Having decided that the Appellants were liable in respect of the second, third and fourth broadcasts, the Judge proceeded to consider the issue of damages. Having referred to leading cases on the issue, the Judge made an award which included general and aggravated damages. She also awarded exemplary or punitive damages.

146. In challenging the award of damages, the Appellants claimed that the Respondent, as Claimant had failed to plead particulars of aggravation. This submission gave us pause and we will address it first.

147. The Appellants stated this challenge to the award of damages at ground (f) of their **Grounds of Appeal**. Ground (f) is set out below:

“Quantum of damages:

(f) The learned Judge erred in law and/or in fact in awarding the quantum of damages that she did which was inordinately high and an erroneous estimate of the general damages (inclusive of aggravated damages) and exemplary damages to which the Respondent feelings, reputation and career as well as in consideration of the findings made in favor of the Appellants case”⁸⁰

148. I have set out this ground of appeal in full, in order to examine it against the Appellant’s Written submission, which made a compelling observation that a claim for aggravated damages in libel should be supported by particulars of aggravated damage in the pleading.⁸¹ The Appellants quoted from **Gatley on Libel and Slander 12th Ed 2013** as follows:

“26.29. Where damage must be pleaded. However, where the claimant claim to have suffered an injury going beyond the normal damage which is presumed to follow in the ordinary course from a defamatory publication, he must give particulars of the facts and matters relied upon in support of the claim including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the claimant’s own circumstances. The purpose of this rule is to ensure that the defendants has adequate warning of the case which he has to meet and is assisted in computing the monetary element of any Pt 36 offer which he may choose to make. A claimant is accordingly required to give details of any matters on which he will rely in aggravation of damages,

⁸⁰ See Record of Appeal Volume 4/4 at page 8

⁸¹ See page 45 of 57 of the Appellant’s Written submission

such as malicious conduct on the part of the defendant, that the publication complained of was also a violation of his privacy or personal life, or that the defendant has failed to retract or apologies for the defamatory allegation. The claimant must also give details of any idiosyncratic feature of the case which has caused him to be more adversely affected by the publication than might ordinarily have been expected. A claimant should therefore ensure that he has included in the particulars of claim every matter which is distinct to the circumstances of his case and which he will seek to contend at trial has particularly contributed to...,”

149. There could be no question as to the correctness of the exposition from the learned authors of *Gatley on Libel and Slander*. What is noteworthy however is that the complaint of an absence of particulars of aggravation appeared for the first time in Mr. Benjamin’s written submissions. This is borne out by an examination of the proceedings before the High Court where it will be observed that in the Appellants’ (then Defendants’) submissions before the Judge, the argument as to a lack of particulars was clearly absent. The issue of the absence of the lack of particulars appears for the first time in the written submissions and indeed was not addressed at all in Mr. Benjamin’s *viva voce* submissions. It appears therefore, that this argument was an afterthought and indeed one that was abandoned at the hearing of the appeal.

150. Nonetheless, we proceed to consider the argument in the context of the appeal which lies before us. We begin by examining the Amended Claim Form, in which the Respondent claimed “*Damages for Libel*” at paragraph 1. He claimed “*Special Damages*” at paragraph 2 and “*Aggravated and Exemplary Damages*” at paragraph 3.⁸²

151. The Amended Claim Form was accompanied by the Amended Statement of Case in which we find, set out at paragraph 17 “*Particulars of Loss and Damage*”. Under this head, the Claimant provided particulars of losses which he suffered in the aftermath of the broadcasts, his loss of sponsorship. He further averred that the statements were published

⁸² See page 56 of the Core Bundle.

recklessly as to their truth or falsity. The Claimant pleaded that the tactical use of the pre-recording was designed to taunt, antagonise, provoke and denigrate him.

152. The question which arises is whether the failure on the part of the Respondent, then Claimant to specify in the Amended Statement of Case that he was providing particulars of aggravated damages rendered the particulars deficient as contemplated by the learned authors of *Gatley on Libel and Slander 12th ed.*

153. In our view, to answer this question affirmatively would be to adopt an approach which is far too pedantic. There was more than substantial compliance with the rule that particulars of aggravated damages should be provided. We hold therefore that the ground as argued does not provide a good reason for reducing the award which was made by the Judge.

154. Having determined that the pleading issue is unmeritorious, we proceed to consider the Judge's assessment of damages. The Judge correctly referred to the leading authorities, which included *T&T News Centre Ltd v John Raphael*⁸³ where Kangaloo JA identified the threefold purpose of an award of damages in libel to be:

- i. To compensate for distress and hurt feelings
- ii. To compensate for any actual injury to reputation
- iii. To serve as an outward visible sign of vindication

155. The Judge quoted extensively from the words of Sir Thomas Bingham in *John v MGM*⁸⁴. These words bear repetition:

“In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel, the more it touches the plaintiff's personal integrity professional reputation....the most serious it is likely to be....”

156. The Judge carefully applied the learning to the facts, which had been established by the evidence. She took into account the listenership of the talk show programme *“I Sport with fearless one”* and that it had been aired since 2005–2006. The Judge found that the many years over which the programme was aired spoke to its success, since it had survived the test of time.

157. The Judge also took into account the availability of devices in the modern age to assess how wide would be the reach of the broadcast.

⁸³ Civ App 166 of 2006

⁸⁴ [1997] QB 586

158. She considered the gravity of the allegations including sexual misconduct and the use of drugs.
159. The Judge considered similar awards and found that the case before her was not comparable to that in *Ricardo Welch*⁸⁵ since the award in *Welch* was based on a finding of malice on the part of the defendants in that case. By contrast, the Judge noted that there was no allegation of malice in the case before her. She also held that the cases of *Rowley v Annisette*⁸⁶ and *Ramlogan v Warner*⁸⁷ were not comparable, because of the superior standing of the claimants in those cases.
160. The Appellants criticised the Judge for her comparison of the instant case to *Seebalack Singh v. Trinidad Newspaper Ltd and others*.⁸⁸ We do not agree. The Judge did not engage in a microscopic comparison of *Seebalack Singh* and the case before her. Indeed, she was not required so to do. She correctly considered the similarity between the respective claimants and in our view correctly held that they were broadly similar. Mr. Singh was a CEO of company and the Respondent here was a well-known public figure in boxing. The Judge cannot be faulted for holding that they were of similar ilk.
161. The Judge also made an award of exemplary damages, directing that the Appellants pay to the Respondent one hundred thousand dollars (TT \$100,000.00) under that head. In so doing the Judge correctly set out the law as established in *Rookes v. Barnard*⁸⁹, where Lord Devlin identified three situations in which an award of exemplary damages may be made. The second situation is relevant to this appeal, as it addresses circumstances where the defendant's conduct is calculated to make a profit for himself. Significantly, Lord Devlin said that one man should not be allowed to sell another man's reputation for profit.⁹⁰
162. The Judge also relied on learning in *Mac Gregor on Damages*, where the learned authors noted that in defamation matters, awards of exemplary damages are likely to be made only where the defendant has calculated that he would profit from the defamation.⁹¹

⁸⁵ Cv 2011-00751

⁸⁶ CV 2010-04929

⁸⁷ Cv 2014 -1134

⁸⁸ CV 2013 - 04366

⁸⁹ [1964] AC 1129

⁹⁰ See *Rookes v. Barnard* [1964] AC 1126

⁹¹ See *MacGregor on Damages* 16th ed. At para 1928

163. In her judgment, the Judge found as a matter of fact that the first Appellant, as a clever talk show host, used the defamatory remarks to gain listenership. We agree with the Judge that this was for his profit.⁹²

164. We therefore hold that the Judge's award of exemplary damages is justified in so far as she held that the Appellants had been reckless as to the truth of the statements and had acted for the furtherance of the programme and therefore for their own profit.

165. The Judge cannot be faulted. She conducted the exercise of assessment of damages carefully, and was loyal to both the authorities and the evidence. The appeal in this regard is likewise dismissed.

Costs

166. The Appellants argue that the Judge was wrong in omitting to apportion costs. It is well known that orders for costs in civil matters are governed by **CPR**, Parts 66 and 67. The relevant parts are set out below.

“ Successful party generally entitled to costs

CPR 66.6

(1) If the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.

(2) The court may, however, order a successful party to pay all or part of the costs of an unsuccessful party.

(3) This rule gives the court power in particular—

(a) to order a person to pay only a specified proportion of another person's costs;

(b) to order a person to pay costs from or up to a certain date only; or

(c) to order a person to pay costs relating only to a certain distinct part of the proceedings, but the court may not make an order under paragraph 3(b) or 3(c) unless it is satisfied that an order under paragraph 3(a) would not be just.

(4) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

⁹² See 180 to 189 of the Judgment.

(5) *In particular it must have regard to—*

(a) *the conduct of the parties;*

(b) *whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings;*

(c) *whether it was reasonable for a party—*

(i) *to pursue a particular allegation; and/or*

(ii) *to raise a particular issue;*

(d) *the manner in which a party has pursued—*

(i) *his case;*

(ii) *a particular allegation; or*

(iii) *a particular issue;*

(e) *whether a claimant who has won his claim caused the proceedings to be defended by claiming an unreasonable sum; and*

(f) *whether the claimant gave reasonable notice of his intention to issue a claim.*

(6) *The conduct of the parties includes—*

(a) *conduct before, as well as during, the proceedings, and in particular the extent to which the parties complied with any relevant pre-action protocol; and*

(b) *whether either or both parties refuse unreasonably to try an alternative dispute resolution procedure.*

(Rule 67.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review)

Prescribed costs

67.5

(1) The general rule is that where rule 67.4 (fixed costs) does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2)–(4) of this rule.

(2) In determining such costs the “value” of the claim is to be decided—

(a) in the case of a claimant, by the amount agreed or ordered to be paid; or

(b) in the case of a defendant—

(i) by the amount claimed by the claimant in his claim form; or

(ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the client liable to, such costs or if not agreed a sum stipulated by the court as the value of the claim; or

(iii) if the claim is not for a monetary sum it is to be treated subject to rule 67.6 as a claim for \$50,000.

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentage specified in column 2 of Appendix B against the appropriate value.

(4) The court may, however—

(a) award a percentage only of such sum having taken into account the matters set out in rule 66.6(4),(5) and (6); or

(b) order a party to pay costs—

(i) from or to a certain date; or

(ii) relating only to a certain distinct part of the proceedings, in which case it must specify the percentage of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.

167. The Judge in her judgment had not considered the possibility of apportioning costs to take into account the issues upon which the Appellant had been successful. The Appellant had been successful in respect of two impugned statements . The first was the remarks of Franchot Moore that Mr. Potts was a promoted, while being , at the same time, a special adviser to the Boxing Board . This the Judge held to have had been protected by both fair comment and Reynolds privilege. The Judge also found one remark by Molly Boxhill to have been fair comment and a warning to parents . More significantly however, the Judge dismissed the claim in respect of the first broadcast on the ground that it was statute barred.

168. We bore in mind that the Judge holds an absolute discretion on the issue of costs.⁹³ The exercise of her discretion would only be set aside if shown to have been unreasonable. We do not hold that the exercise of her discretion was unreasonable. There was no suggestion of litigation misconduct on the part of the Appellant and it could not be said that his claim

⁹³ See Phyllis Rampersad v. Deo Ramlal [2022] UKPC 50

on the first broadcast was unreasonable. Such findings would have entitled the Judge to grant a percentage of the prescribed costs.

169. Moreover, it seems to us that the quantum of prescribed costs is directly proportionate to the quantum of damages awarded. This in itself is dependent on the number of issues upon which the Appellant would have been successful. In other words, had the Appellant been successful in respect of all three broadcasts, it is reasonable to expect that the award of damages would have been greater and consequentially, the quantum of prescribed costs would likewise be proportionately higher. Had the Appellant been unsuccessful in respect of the first broadcast, the award of damages would have been higher and by extension of award of prescribed costs would consequentially be higher. As transpired, the Appellants' success on the first broadcast implied necessarily a lower award of damages and therefore a lower award of prescribed costs. The quantum of prescribed costs is therefore self-correcting. Accordingly, we find no basis to disturb the Judge's order as to costs.

Disposition

170. The appeal is dismissed. The Appellant to pay to the Respondent two-thirds of the costs as prescribed.

Dated December 18, 2023

Mira Dean-Armorer
Justice of Appeal⁹⁴

⁹⁴ Rolana Cuffy-Bernard JRC 1

APPENDIX I

Grounds of Appeal

Meaning of words

- a) The learned Judge erred in law and/or in fact by misapplying the test and arriving at meanings which were not borne out in the natural and ordinary meaning of the words used

in the Second and Third Broadcast and/or in concluding that the words complained of in the Second and Third Broadcast were defamatory of the Respondent.

Reynolds Privilege

- b) The learned Judge erred in law and/or in fact and/or misdirected herself in applying aspects of the test for Reynolds Privilege when she concluded that the defence of Reynolds Privilege was unavailable to the Appellants.
- c) The learned Judge erred in law and/or fact when she applied the test of responsible journalism in a rigid and inflexible matter (sic) having regard to the facts of the case.
- d) The learned Judge failed to attach any or any sufficient weight to the evidence of First Appellant, that the information did not emanate from and he did not accept the comments made about the Respondents as his own or that of the Second Appellant.

Fair Comment

- e) The learned Judge erred in law and/or fact in finding that the statements made in the Second and Third Broadcast were imputations of fact and/or not based on proven facts and concluding that the defence of Fair Comment was therefore unavailable to the Appellants.

Quantum of Damages

- f) The learned Judge erred in law and/or in fact in awarding the quantum of damages that she did which was inordinately high and erroneous estimate of the general damages (inclusive of aggravated damages) and exemplary damages to which the Respondent was entitled having regard to the paucity of evidence in relation to the extent of publication

and impact on the Respondent's feelings, reputation and career as well as in consideration of the findings made in favour of the Appellant's case.

Costs

- g) The learned Judge erred in fact and/or in law in failing to apportion costs pursuant to Part 66.6 of the CPR, having regard to the findings made in favour of the Appellant's case.

APPENDIX II

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 pages 5 lines 8-20 and page 25 lines 5-12:

“Andre Baptiste: What happened? Why are you not in the London Olympics honestly?”

Tariq Haqq:

Two simple words, Boxu Potts. Boxu Potts is like a cancer to sport in Trinidad and Tobago. Boxu Potts in my opinion has tremendously I'm really just emotional right now because of state of affairs that he has sport in Trinidad and Tobago in particular boxing. Boxu Potts has affected the sports in such a manner that it has caused irreparable damage I believe. There are so many things and so many situations that he has put athletes in or basically for his own self-interest and self-gain and after a while you know it becomes really frustrating that you have to continue to deal with this and you have athletes suffering I myself.

Tariq Haqq:

@35:23 – Do I really want to go out there and represent Boxing represent Trinidad and Tobago whilst Buxo Potts is in control, a guy like Buxo Potts who's selfish and egotistical? Um I would really um reconsider and think it over.

Andre Baptiste:

Since your dad's departure have you had a chance to speak to Buxo Potts? Has he tried to approach you?

Tariq Haqq:

Buxo Potts? I don't really want to speak to him. Nothing positive comes from his mouth.

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 page 26 lines 6-27:

Tariq Haqq: @36:40 – Only when I see him on the news am I really disgusted you know seeing Buxo Potts, um and he always thinks that he could try to fool the public of Trinidad and Tobago. I really hope no one in the public reality listens to what Buxo Potts is saying you know because he’s – in my opinion, Buxo Potts, I saw recently that he was speaking about reaching out to Corporate Trinidad and Tobago to get involved. Two people or two parties are going to suffer if that happens. One the Corporate individuals are going to suffer and the boxes are going to suffer, because as a – what is going to happen is Buxo Potts does not conduct his affairs in a very transparent manner. 37:25

Andre Baptiste: What is your experience with that?

Tariq Haqq: Buxo Potts

Andre Baptiste: In terms of affairs in a transparent manner?

Tariq Haqq: Let me give you an example. I will leave it up to you to do the investigate work. Look at one of his cards that he has thrown, look at the amount of money that was allocated for him, ask him where it was spent and also if he can provide any receipts and you would see—I am quite certain that you would find some discrepancy. 37:50

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 pages 29 lines 1-10:

Tariq Haqq: @40:00 -40:31-There is hope for me to come back in boxing but not as – not when Buxo Potts is there.

Andre Baptiste: So Boxu Potts has to leave?

Tariq Haqq: Buxo Potts has to leave, leave, leave, leave. I don't want him to hold any role or portfolio because he is like poison. You know,-if he's like poison, if you have poison in your arm he's gonna poison the entire body. You understand. He's like cancer. He spreads. Boxu Potts, in my opinion, is quite disgusting. Um so he has to leave boxing on a whole in order for me to get back into boxing at any level.

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 pages 40 lines 19-27 and page 41 line 1:

Tariq Haqq: @56:19 – I hate Boxu Potts I swear I really hate Boxu Potts I swear I really hate Boxu Potts and the effect he has on boxing in Trinidad and Tobago. You know sooner or later the country has to become wiser as to the effect that he is having. Don't let this front that he has with Ria Ramnarine and all these other individuals make it seem as though he cares. He doing it because he is gaining financially he's not gonna do anything unless he gains some sort of financial

interest. So don't be swayed by all his press conferences because he is a pack of lies and nonsense: 57:01.

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 pages 41 lines 20-27 and page 42 line 1-3:

Tariq Haqq: @58:18 – I think Boxu Potts needs psychological help and he himself should probably see a social worker because I don't know if he is traumatised the reason – perhaps the way that the reason why he's behaving the way that he is, is because he has issues, he has trauma issues he has psychological damage done or something of the sort. So an individual like this is gonna inspire and help other individuals with problems? Another part of the contract is “Inclusive would be motivational lectures” Who is Boxu Potts gonna motivate? What are you gonna motivate me and tell me? What can you possibly tell me? 58:54

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 pages 51 lines 2-25:

Andre Baptiste: 1:12:58- What advice would you give to anyone wanting to get involved in boxing right now?

Tariq Haqq: Get involved in boxing with Boxu Potts involved? Stay very far away. Stay very far away from boxing.

Andre Baptiste: In other words, parents who have young boys and young girls who might want to get involved in boxing right now?

Tariq Haqq: Young girls especially the young girls with Boxu Potts, stay far away. Stay very far away be wary of the arrangement and the contracts that you have with Boxu Potts, I believe that um-I mean, if you walk around Port of Spain, if you speak to 10 people ask them their perception of Boxu Potts, I guarantee about eight out of 10 is going to have something-

Andre Baptiste: Nah, Nah, nine.

Tariq Haqq: Nine? I wonder if it's even possible to defame Boxu Potts?

Andre Baptiste: Nine....Nine....

Tariq Haqq: Because of the....

Andre Baptiste: Some people say ten eh.

Tariq Haqq: Ten? (laughter)

Andre Baptiste: But I think it close to nine honestly

Tariq Haqq: Nine. But it really is disgusting-1:13:53

Verbatim Statements taken from the Claimant's Transcript 2013.03.02 page 9 lines 17-27 and page 10 lines 1-4:

Franchot Moore 14:10 to 15:06-and this [Boxing System] is being controlled by one individual who was appointed illegally while he was still a boxing promoter and it was only until Tansley and I and you, Andre, exposed that on this show over two years ago, then he went and submitted his resignation as a promoter after he had already established his position as boxing advisor contrary to Article 7 of the Boxing Control Act which states that no promotor under no

circumstances at any time should be associated with any decision making process in professional boxing. You see? And now it came to the point now where his own son who was colluding with him to even blacklist me, ran away from him, get fed up, realized that his own father is about to tarnish his reputation and image and he cut loose his father. The Minister have to see the light of the day and the Minister have to realize that Boxu Potts is going to bring his down. You see?
@15:06

Verbatim Statements taken from the Claimant's Transcript 2013.03.02 page 34 lines 21-27, page 35 lines 1 to 3 and lines 23 to 26:

Andre Baptiste: All right. You know every time you bring up [inaudible] I remember something, listen to this.

REPEAT SEGMENT:

“Pre-recorded Interview:

Male Voice: And now, listen to this long sentence on 1 Sports.

Mr. Tariq Abdul Haqq: Boxu is like a cancer to sport in Trinidad and Tobago. Buxo Potts has affected, um, the sport in such a manner that it's – it has caused irreparable damage, I believe, and I think everything that he does is basically for his own self-interest and self-gain. That is problem throughout sport in Trinidad and Tobago....I really hope no one in the public really listens to what Buxo Potts is saying,

you know, because he's- I, in my opinion, Buxo Potts is a hustler with a suit on. That's Buxo Potts"

The third part of the Second Broadcast which the Claimant alleges defames him are the following words:

"Session continues @49:30 to 50:30:

Andre Baptiste: So there is Boxing Board. I mean what does that mean? Mr. Moore you are the man with all the knowledge here of all of us in terms of boxing from an official point of view. With no Boxing Board, what does that mean?

Franchot Moore: I wouldn't say all the knowledge, but um some knowledge. It means that there is no boxing. Boxing is dead. There is no direction for our young people. There is nothing to-

Andre Baptiste: So how, how is it funded? Because we all know that funding took place for the Amateur Championship recently. It was widely publicised and it was widely promoted. How is that happening without a Boxing Board?

Franchot Moore: Well to be honest with you

Andre Baptiste: Is it an Illegal event?

Franchot Moore: I would only think-the only thing that I could envision is Mr. Potts taking an envelope to Mr. Forde and saying "This is what we have for you

Andre Baptiste: Well we heard Marlo Robinson say that he sometimes carries cash or cheques-

Franchot Moore: Absolutely

Andre Baptiste: -to Mr. Forde. He did say that

Franchot Moore: I was going to allude to that -@50:30

Verbatim Statements taken from the Claimant's Transcript 2013.03.02 page 51 lines 13-17 and lines 22 to 26 and page 52 lines 1-15:

Franchot Moore:And you know, let me just add something else and Tansley bought up a point, I think it was Tansley or Mathew about, um, somebody who spoke about the effects, the impact Boxu had on the lives of young women an these things.

Tansley Thompson: that came Tariq Haqq and, and and -uhm..

Franchot Moore: Let me extend on that and this is a matter of public record. When I was the Technical Officer of the Trinidad and Tobago Boxing Board in the last bout with-the last bout with Giselle Salandy, a lady walked out as I was passing and handed me a photostat copy of an editorial to the Editor. I forgot the date but it was in the Express and this was dated six years ago. And this is a premonition of a mother. She wrote to the Express and was asking why the former Minister

of Culture and the former Minister of Sport was allowing was giving Boxu Potts so much money. They also told them that Boxu Potts was-in that article she said Boxu Potts is responsible for my daughter languishing in a foreign jail transporting cocaine. She went on to say that Boxu Potts will be the death of Giselle Salandy and most importantly in that article she said, that by the time Boxu Potts got through with Giselle Salandy she will be worst off and I quote “worst off them dog with mange”. This article is in the New York-not the New York I’m sorry-the Trinidad and Tobago Express at least six years ago. The lady has her name and she was from St. James. I have a copy of the article. Let any member of the public go and research that. And that is what that lady wrote six years ago telling us about this mam and here were are six years into the future and manifestation of that. You know.

Verbatim Statements taken from the Claimant’s Transcript 2014.02.03 page 17 lines 23 to 27 and page 18 lines 1 to 4:

Claude Noel:

...Where he [Boxu Potts] was working in the horse racing paddock and he was fired from the horse racing paddock for doping, using drugs on horses is athletes because they are competing and he was using drugs, because he is a gambler and the more money

he get to gamble good, he don't care who he destroy and here he come in boxing he even get himself involved in using drugs. Unfortunately he was exonerated because he didn't have a contract with Ria Ramnarine, he was just the promoter but he wanted Ria Ramnarine to take the place of Giselle Salandy...you understand?" Stopped 25:13

Molly Boxhill: Hello good evening Andre, Molly Boxhill here.

Andre Baptiste: Hi oh. Good evening.

Molly Boxhill: What happening?

Andre Baptiste: Alright

Molly Boxhill: I so glad I get here. Because I, you know, I was the secretary of the Board for must be nearly 25 years. And I am now the executive member of the Amateur Association a very important piece of an executive. I'm the trustee and is years now we haven't had a meeting we had a meeting about three after that. From the time Boxy Potts came on the scene, no meeting. Everything is Boxy Potts.

Everything is Boxu Potts. Cecil [Ford] and Boxu Potts like 2 peas in a pod and nobody could get between them. And I am saying here that the quicker

they remove this man, even the Minister – a gentleman say to remove the Minister, I am in too with that too.

Because how could the Minister associate with a man like Boxu Potts. My mother used to say show me your company and I will tell you who you are. Let me tell you something. I am asking the young people in boxing the girls 13, 14, 15, 16 years old I am asking their parents to be more steadfast with them because when there is a boxing thing in Marabella south you see the certain person coming with a young girl 14, 15 years all eleven o'clock when the fight is near to finish walking in with that girl, that young girl. What these parents doing? Why they're not checking on their daughters in these people gym? This certain person, not all gyms because there are same respected gyms, but this particular gym I am talkng about, I could verify, because.....

Molly Boxhill:

I only see he bring in this young girl a time and he say that she now come out from training. This is what he said, he now brought her from training. So he brought her down to see the finishing up of the-

Andre Baptiste: No but if the girl is crying, she crying from the training? [panel laughs]

Molly Boxhill: I don't know what she was crying for. I trying to get it from her but she wouldn't talk. She wouldn't talk. I guess she under him. She was under him crying.

Andre Baptiste: So why didn't you talk to him?

Molly Boxhill: I don't meddle with that man. I doh have anything to do with him. I don't want to have anything to do with that man at all, because, hear nah, why you think we got into this amount of cross-thread and confusion? You remember Braithwaite, Wayne Braithwaite?

Andre Baptise: A boxer?

Molly Boxhill: From Guyana

Andre Baptiste: Yes

Verbatim Statements taken from the Claimant's Transcript 2014.02.15 page 71 lines

3-11

Unidentified Caller: Yeah Jerry Springer [panel laughs]

Andre Baptiste: I don't think so eh. Because Jerry Springer does have some anyways, I don't ent? Anyway anyway.

Unidentified Caller: How all letter this woman come and talk about man want to carry young girl home and all kind of thing?

When you asking she why she ain't go to the police
she aint see.

[Host Andre laughs/chuckles/giggles]

Unidentified Caller: You can't have people blaspheming [sic] people over
the radio Andre. It disintegrating down to Jerry
Springer. Watch yourself.

Andre Baptiste: Alright thank you very much sir – keep listening
though”