

company with place of business at Orange Walk Town, Belize. The claimant and the defendant became acquainted with each other, when the claimant was a supervisor representing his firm at a construction project undertaken by the defendant's company.

2. The claimant alleged that the defendant sent an e-mail to his employer, Mr. Carlton Young, around 15th February, 2008 which contained defamatory words to the general effect that the claimant accepted a bribe for the purpose of giving the defendant a contract for a construction project. The claimant alleged that because of that e-mail he lost his job, and his character and reputation were damaged; and he suffered psychologically by the said e-mail. The material part of the e-mail is as follows:

“It came to my attention that Rodolfo Ramos had spoken to some of my workers in Consejo saying that he Rodolfo Ramos would personally see to it this project be taken from our hand. This scared my workers from continuing in fear that they would not receive payment.

During the time of bidding on this project Rodolfo Ramos had approached me, Simeon Herrera, asking for money and he will give me the Christine Tibe Project. Rodolfo accepted a fee of \$5,000,00.

On Serenity Sands, again Rodolfo approached me, Simeon Herrera, for a kick back in exchange for giving us the project. Mr. Castillo agreed to give Rodolfo a lot here in Orange Walk in exchange for the project, again Rodolfo accepted. However,

we did not get Serenity Sands and Rodolfo kept ask for his lot.

Mr. Young, I am telling you this so that you may be aware and to be careful in your dealings with Rodolfo.

I apologize to you Mr. Young for not completing your project and for not being more involved in communication between YEC and HC.

Sincerely.

Simeon Herrera”

3. The claimant on 30th April, 2008 brought a claim against the defendant for damages, including aggravated and exemplary damages for libel; and an injunction to restrain the defendant from publishing the said libel.
4. The defendant failed to file an acknowledgment of service to the claim, and on 28th May, 2008 a judgment in default was entered by the Registrar against the defendant, authorizing the claimant to recover damages, including aggravated and exemplary damages for libel, plus interest and costs. An injunction was also granted restraining the defendant, his servants and agents from publishing the said libel.
5. By an application dated 12th June, 2008 to set aside the said default judgment, the Registrar on 23rd September, 2008 set aside the default judgment and gave the defendant leave to file a defence to the claim on or before 7th October, 2008. The defendant having failed to file the defence, a second judgment in default was entered by the Registrar

against the defendant on 23rd October, 2008, authorizing the claimant to recover against the defendant the said damages; and the injunction mentioned in the first default judgment was granted. No application was made to set aside this second default judgment.

6. The claimant applied under Rule 16.2 of the Supreme Court (Civil Procedure) Rules 2005 for a date for assessment of damages. The claimant also applied for evidence of assessment to be by affidavit. An order was made for a date for the assessment; and both the claimant and defendant presented evidence by affidavits. On 24th November, 2009, the parties made written submissions in relation to the assessment of damages; and both relied on the matters stated in their affidavits.

7. The publication of the libel by the defendant was by e-mail to the claimant's employer, Mr. Carlton Young. It was not by publication in a newspaper or other parts of the media easily accessible to the general public. Access to that e-mail would have been accessible to Mr. Young and other persons who knew Mr. Young's e-mail address and password. There is no evidence that the password and address were known by other persons or that the e-mail was published to other persons by the defendant. The claimant alleged that his colleagues and former clients became aware of the libel and ceased doing business with him; and were reluctant to hire him because of the libel. But there is no evidence of how these professional colleagues and clients became aware of the e-mail. There is no evidence that the defendant published the e-mail to these colleagues and clients.

8. The claimant further alleged that Mr. Young, because of the libel, refused to pay him for work done in the sum of \$10,000. The claimant states that because of the libel, he is unemployed and he lost an opportunity to earn \$5,000. as a sales representative with a Guatemalan Company. The claimant said that because of the libel his employment, which carried a yearly income of \$50,000, was terminated. The claimant has produced no evidence, apart from his own assertions, to prove the losses mentioned above, or that the termination of his employment was because of the libel.

9. The burden is on the claimant to prove those losses on a balance of probability; and I would have expected to see affidavits from Mr. Young and a few of the claimant's colleagues and clients, and from the Guatemalan Company to support the claimant's assertions that he suffered such losses because of the publication by the defendant of the libel contained in the e-mail. In the absence of such independent evidence, and the fact that no oral evidence was given in this case, which would have given me an opportunity to observe the witnesses demeanour, I am not satisfied, on a balance of probability, that the claimant suffered those losses because of the libelous words.

10. But the evidence of the claimant that he suffered emotionally and psychologically and lost the confidence of his former employer Mr. Young as a result of the libel is more believable. It is easy to appreciate that to publish the words of the libel to one's employer would cause psychological pain and suffering and would expose one to ridicule, contempt and disrespect by one's employer. The words

published would also injure the reputation and character of the claimant in the eyes of his employer.

11. The claimant is entitled to recover from the defendant compensatory damages, as will compensate him for the damage to his character and reputation and that will compensate him for the distress, hurt and humiliation which was caused by the libel. The court in considering the amount of damages to award in cases of libel ought, among other things, to consider the nature of the libel, the extent to which it blemished the claimant's integrity, reputation and his character and the width or extent of the publication. "A libel," says Bingham MR in *John v. MGN Ltd. 1996 3 W.L.R. 593, at page 607*, "published to millions has a greater potential to cause damage than a libel published to a handful of people."

12. When awarding damages for libel, the court ought also to consider any additional injury caused to the claimant's feelings by the defendant's conduct. For instance, where the defendant insists that the publication was true, knowing that it was untrue; or when he refuses to apologize, even though requested by the claimant to do so. Damages for libel ought to be in an amount that shows the public that the claimant's reputation has been vindicated. Lord Hoffman in *Gleaner Co. Ltd. v. Abraham 2003 63 W.I.R. 197 at page 25* said:

"Damages must be sufficient to demonstrate to the public that the plaintiff reputation has been vindicated. Particularly if the defendant has not apologized and withdrawn the defamatory allegation, the award must

show that they have been publicly proclaimed to have inflicted a serious injury.”

13. There are other matters which the court may consider in deciding the amount of an award in libel or defamation cases. The authorities suggest that the court may consider, (i) the purchasing power of the dollar, (ii) a comparison with awards in other libel cases, and (iii) a comparison with awards of general damages in personal injury cases: see *Sutcliffe v. Pressdram* 1991 1 Q.B. 153; (purchasing power); *Rantzen v. Mirror Group Newspaper* 1993 4 All E.R. 975 (comparing Court of Appeal awards); *McCarey v. Associated Newspaper Ltd. No. 2* 1965 2 Q.B. 86 at page 109 (reference to awards in personal injuries cases.)

14. It must be noted that in *Sutcliffe* above, the court rejected the practice of making comparisons with other libel awards; and Lord Hailsbury in *Broome v. Cassell & Co. Ltd.* 1972 A.C. 1027 at page 1070 rejected the comparison of awards in general damages in personal injuries cases with libel or defamation cases. But the Privy Council in *Gleaner Co. Ltd. v. Abrahams* 63 W.I.R. 197 held that the reference to other awards in defamation cases by the Jamaican Court of appeal was understandable. The Privy Council also held that whether guidance as to the amount of awards for defamation should be sought from awards in personal injuries cases “was not a matter on which the Privy Council would take a view.”

15. I bear in mind the guiding principles from the cases mentioned above. I also consider the facts of this case. I pay particular attention to the fact that the publication in this case was by e-mail to a particular individual Mr. Young, and not by virtue of a newspaper which is directed to the public at large. I note the awards in *Lois Young Barrow v. Andrew Stienhauer and Belize Times Press Ltd. No. 561 of 2006* and *Said Musa v. Ann Marie and another No. 305 of 2005*. Both of these cases were decisions of the Supreme Court of Belize; and they were defamation cases against newspapers. The court awarded damages in those cases in the sum of \$30,000 and \$25,000 respectively. But I must bear in mind that those awards were made with respect to newspaper publications and not by e-mail to a particular individual.
16. I need also to bear in mind that the defendant failed to apologize to the claimant, even though he was requested more than once to do so. But I also consider that the defendant did not dispute the publication in a trial; and that he did not apply to set aside the second judgment in default.
17. In paragraph 6 of the affidavit of the claimant dated 25th June, 2009 the claimant swore that the defendant wrote, published and sent via e-mail to Mr. Carlton Young the defamatory words. In paragraph 3 of his statement of claim, the claimant makes the same charge against the defendant. In other words, the claim of the claimant is that the libel was published by the defendant to Mr. Young by e-mail.

18. As mentioned above, the claimant stated that he was dismissed from his job causing a loss of \$50,000 a year; that he was unemployed; that his colleagues were aware of the defamatory words; that some of his clients terminated business relations with him; and that he lost a job with a Guatemalan Company as a sales representative. But the question arises: Did the claimant suffer the above mentioned losses because of the defendant? As pointed out above, I am not satisfied, on a balance of probability, that this is so. Lord Hoffman in *Gleaner Co. Ltd.* above, correctly observed that: “In defamation cases it is usually difficult to prove a direct causal link between the libel and loss of any particular earnings or any particular expenses.” I find that the claimant has failed to prove the causal link between the libel and his dismissal and financial losses. But there is no doubt in my mind that his feelings were hurt and he suffered psychological pain and emotional distress as a result of the e-mail to his employer.
19. The court in an attempt to award an amount as general damages in defamation cases, tries to put a monetary value, after considering other awards, on the damage caused to the reputation of the claimant; and the psychological and emotional pain and suffering endured by the claimant as a result of the defamatory words published by the defendant. In its duty to arrive at an appropriate monetary value, the court is not assisted, to use the words of *Bingham LJ in John v MGN Ltd. above at page 608*, by “any precise arithmetical formula to govern the assessment of general damages in defamation cases.” Perhaps the words of *Canberry JA in United Dairy Farmers Ltd. v. Gouldbourne*, spoken in the context of physical injury cases, are

relevant to defamation cases. “In making awards,” the judge said, “the courts do their part to measure the incomprehensible or the immeasurable but there is a stage at which this ends and sheer speculation begins”: *see Gravesandy v. Moore 1986 40 W.I.R. 222 at page 228.*

20. Considering the evidence in this case and the above authorities, and doing the best I can, bearing in mind that I must award an amount that is fair and reasonable, I award the claimant the sum of \$5,000. as general damages for libel. I do not make an award for exemplary damages, because I do not find that the conduct of the defendant was calculated to make him a profit which would have exceeded any compensation payable to the claimant: *see Rookes v. Barnard 1964 A.C. 1129.* But I think the claimant is entitled to aggravated damages, which are damages designed to compensate the claimant for additional injury he suffered, going beyond that which would have flowed from the libelous words alone: *see Halsbury Laws of England Vol. 28 Fourth Edition paragraph 235 and Rooker v. Bernard 1964 A.C. 1129.* The aggravating factor in this case is the defendant’s failure to apologize to the claimant for the libelous words, although requested to do so. I award aggravated damages to the claimant in the sum of \$2,000.

I therefore make the following orders:

1. The defendant to pay damages to the claimant in the sum of \$7,000.00.

2. Defendant to pay interest on the said sum of \$7,000.00 at the rate of 6% per annum from 15th February, 2008 until the sum is fully paid.
3. Defendant to pay costs to the claimant in the sum of \$1,500.00.

Oswell Legall
JUDGE OF THE SUPREME COURT
8th December, 2009