THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2020-01531

BETWEEN

DAVLIN THOMAS

Claimant

AND

NARESH SIEWAH

Defendant

Before the Honourable Madame Justice Margaret Y. Mohammed
Date of Delivery 28 September 2023

APPEARANCES:

Mr Farai Hove Masaisai instructed by Mrs Jennifer Farah-Tull and Ms Bernelle-Joy La-Foucade of the firm Hove and Associates Attorneys at Law for the Claimant.

Mr Leon Kalicharan Attorney at Law for the Defendant.

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JUDGMENT

INTRODUCTION

1. The Claimant is the current Chief Executive Officer ("CEO") of the North Central Regional Health Authority ("the NCRHA") and the Hospital Manager II at the Caura Hospital and Mount Hope Women's Hospital. The Claimant is also the Vice Chairman and Chairman of Finance and Human Resources Committee of the National Carnival Commission. Prior to this, the Claimant held the position of a Local Government Councillor and performed roles as Artistic Director, Producer and Stage Manager of both local and foreign large-scale theatrical productions.[1] The Claimant has held and continues to hold high ranking positions in varied portfolios. In his capacity as CEO, the Claimant not only ensures that all of the Health Institutions under the NCRHA are efficiently and effectively run but also that public funds are efficiently deployed and not misappropriated.[2] He has brought this action seeking damages included aggravated and exemplary damages for approximately 14 defamatory statements published on the Defendant's personal Facebook page and the Group Facebook pages TrinbagoLivesMatter" and "THE VOICE OF TnT 99%" on 24 March 2020, 25 March 2020, 30 March 2020, 2 April 2020, 5 April 2020, 11 April 2020, 27 April 2020, 14 May 2020, 15 May 2020, 19 May 2020, 21 May 2020, 31 May 2020, 8 June 2020 and 9 June 2020 (collectively referred to as "the Facebook posts"); special damages; and damages for the republication of the Facebook posts by Third Parties.

2. The Claimant also sought and obtained an injunction to prohibit the Defendant, whether by himself, his servants, agents or otherwise from further publishing or causing to be published any words, statements and/or innuendos defamatory of the Claimant; an apology and public retraction in writing by the Defendant, to take the same form of the original defamatory publication, being an equally highlighted post

[1] Witness Statement of the Claimant filed on 27 September 2021, paragraphs 2-3
[2] *Ibid*

published on his Facebook profile and the other Facebook profiles that the Defendant shared the Facebook posts on; interest; and costs.

3. The Defendant has denied that he has spoken or published certain of the words set out in the Facebook posts. He contended that the words complained of did not refer to the Claimant; that the words could not be understood to bear or be capable of bearing the alleged defamatory meanings; that they were mere words of heat and further, that if the Defendant spoke and published the words complained of these publications were protected by qualified privilege.

THE CLAIMANT'S CASE

4. The Claimant contended that on 24 March 2020, 25 March 2020, 30 March 2020, 2 April 2020, 5 April 2020, 11 April 2020, 27 April 2020, 14 May 2020, 15 May 2020, 19 May 2020, 21 May 2020, 31 May 2020, 8 June 2020, and 9 June 2020 and in excess of 20 other separate occasions, the Defendant made and republished certain Facebook posts on both his personal Facebook page and the Facebook pages "TrinbagoLivesMatter" and "THE VOICE OF TnT 99%" which he alleged are defamatory in nature. At paragraph 8[3] of the Claimant's Statement of Case, the Claimant contended that on 24 March 2020, the Defendant posted onto his personal Facebook profile in addition to the Facebook Group "TrinbagoLivesMatter", the following post *(excerpt replicated as it appeared in the original Facebook post)*:

> *"I HAVE A FEW QUESTIONS FOR THE MINISTER OF HEALTH.*
> *Since he has so much confidence when it comes to the CEO of NCRHA can the minister who knows ever thing tell us why the following is being done under his watch.*
> *WHY WAS THE ACTING Hospital Manager at Caura (Angela) recently removed and sent back to her substantive post as Business. Manager at the Mt hope?*
> *And*
> *WHY NO sustantive person assigned to replace her to date..*

[3] See paragraph 8 on page 7 of Trial Bundle 1 "Pleadings", Statement of Case

WHY IS The Facility Manager at Arima,(MISS Bethelmy) NOW covering both areas temporarily ..... How strange.. What makes her so special? Is she a prefer frieñd of the CEO.
INADDITION while the Minister and CEO boast regarding Caura there is no qualified persons to manage thr Caura facilities on site given its high profile as its relate to COVID 19.
Mr. Minister please tell us how was Miss Aneisa selected as the Ag.Business Manager designate for Couva. Is this person currently the Ag.Executive Assistant to the CEO of Mt Hope.
MINISTER TELL US WHERE WAS THE INTERNAL ADVERTISMENT FOR THAT POST HOW WAS SHE SELECTED OR IS IT A CASE OF (Job for boys and girls).
Mr Minister can you also inform us how Mr. Mason whos substantve post is really Senior Medical Records Officer at.Maternity Hospital was selected for the position as Hospital Improvement Manager for NCRHA and then was.appointed.to Regional Medical Records Manager for NCRHA until most recent his appointment as acting Complex Adminstrator while the currently holder was send on Administrative leave by the CEO.WAS THIS DONE TO satisify the CEO boy. Mr. MASON who is employed.for 13 years or so What makes him so special to be elevated so quickly. WHAT IS HIS QUALIFICATIONS CAN THE MINISTER TELL US.
IN ADDITION can the Minister of Health who praises the FAIL CEO OF MT HOPE why was Miss Michelle who is head of the pharmacy send on 2 weeks without pay leave. Was it because she stood up to the CEO regarding taking drugs/tablets which was allocated for Mt hope to be send to Couva.
Also Mr Minister can you tell us why did the CEO of NCRHA treaten Dr. Siewnarine who is the Head of Anesthesia and ICU at MT hope. Telling her if she cannot do as instucted she better leave. WHY IS THE CEO TREATEN AND BULLYING STAFF MR MINISTER. Please tell us if this type of behaviour is acceptable to you and your ministry.
FINALLY CAN YOU AS MINISTER OF HEALTH TELL US WHO IS THE MEDICAL CHIEF OF STAFF FOR THE COUVA HOSPITAL SINCE THIS IS NOW OPERATIONAL FOR THE COVID 19 AS THE TERTIARY UNIT.
AND
WHEN WILL THE POST OF HOSPITAL MANAGER BE ADVERTISED AND PERSONS INTERVIEWED FOR THIS POSITION.
STOP PLAYING POLITICS AND STOP GIVING JOBS TO BOYS AND GIRLS OF THE CEO. MR. DAVLIN."

5. The Claimant also contended that on the following day, 25 March 2020, the Defendant posted the following on his Facebook profile and on to the Facebook Group

"TrinbagoLivesMatter" *(excerpt replicated as it appeared in the original Facebook post)*:[4]

> *"CAN THE NCRHA BOARD AND THE Minister OF HEALTH please tell us why this show/drama/play with Davlin is continuing. running a RHA is not a play or a production in a theatre, it is serious business as lives matter especially now.*
>
> *Tell us what ever happened to the price rigging allegation made by the UNC MP. was the right person ever investigated- Mr. Andy and his accomplices. Mr Andy is acting Manager for Stores/ purchasing at mt hope and he is not qualified for this position. It is alleged that Andy was only put there to arrange kickbacks from contractors and suppliers for the CEO and his boys and girls. Andy is incompetent in running the stores at mt hope. please investigate.*
>
> *Mr. Minister, what about Mr McClean, Manager for Cleaning Department at mt hope, is he still getting two salaries for two positions? Have your ministry and the board receive the complaints about the cleaning department? the current standard is deplorable especially from the cleaning contractor Zorinas. whose company is this? Why has not the board or your ministry conducted an audit into this company and funs allocated, payments given. Is Mr McClean qualified for this position, why were other staff bypassed for this position? Apparently Mc Clean and the CEO are personal friends*
>
> *So much is happening at NCRHA but is it really to help improve the state of patient care or is the Ceo running Mt hope as a feeding ground for his boys and girls.....*
>
> *Tell us what is the role and function of the DOH Mr Ramroop, nobody seems to know what he does.is his fuction similiar to that of the queen or president because he makes no substantial contribution to mt hope besides causing confusion and conflict. what is the CEO doing about this? who is really running the show? Why was dr Ojuro, from Nigerian or African anon national*

[4] See page 4 Trial Bundle "Witness Statement and Evidential Objections"

given the positikn as medical chief if staff why was many other seniour clinical doctors bypassed for this position? What happened to Dr. Lisa Mohammed?

Mr. Minister and the board of NCRHA am sure persons are curious to know what really happened to Mr Adesh Deonarine and Miss Coreen Isaac. These two long standing employees have been send on admin leave for so long. WHY? Take a walk through the hospital Mr Minister and talk to staff about how safe they feel, they will tell you how the security services have deteriorated over the past year under the management of Mr Grant. how many robberies have taken place, ask the Nurses.

WHAT IS THE BOARD DOING. WHY IS THE CEO NOT BEING CALLED TO ACCOUNT FOR HIS ACTION?

Why is the the CEO and the COO being allowed to use and abuse staff, how much more victimization must be endured. Tell us what happened to Miss Ramoutar another long standing employee, Manager of maternity, why was she demoted and replaced with a juniour staff Miss Aberdeen. Miss aberden has been known to be abnoxious, unprofessional and incompetent. Please talk to staff you will hear everything. Talk to staff at the Pharmacy and Theatres.

So you see the trend Mr Minister, why are senior staff members being demoted, bypassed/ blacklisted for positions. the positions are only given to the Boys and Girls of the CEO. Is it race ,nepotism, and favoritism at its highest? WE want answers FROM YOU Mr Minister and the Board as well.... Why dont you meet with middle managers and supervisors, have a one on one with staff and hear the whole story, the truth MIGHT BE REVEALED THEN.

CAN THE BOARD AND YOU MR MINISTER CALL ON THR CEO TO tell us what happened to Miss Cadogan, manager for arima health facility, a long

standing employee, worked over 4 years in position at arima, worked as personal assistant to chairman for years, worked as executive secretary/ assistant to CEOs previously, why was she demoted and forced to resign?

CAN YOU AS MINIATER TELL.US What is the true picture at Chaguanas Health Facility, why is Miss Pilgrim so quiet, is it that all is well at Chaguanas? What ever happened to the audit at Chaguanas and the pilfering of toiletries and audit of purchasing practices? is it all being covered up because Pilgrim and Davlin are friends?

Now back to the blue eye baby, Mr Mason, what happened to Miss Patrice, why was she removed and replaced by Mr Mason? So many questions Mr Minister, are we really so much better?

THE BOARD AND THE Minister, should conduct a HR and HR practices audit, payroll audit, Finance/ purchasing audit at NCRHA?

AN Investigation AND HR audit into persons highlighted above should be conducted by and independent person who will raffle the mess being created by and incompetent and shallow minded CEO.

Word on the ground is that this CEO is aspiring to be an MP and next minister of health.

IS this what the PNM party really stand for? What are the executive members doing let your voices be heard. Election 2020 is coming. We must stand up against failure and persons who were selected by mps and has fail us."

6. The Claimant asserted that the Defendant made and continued to make similar posts of this manner, tone and nature, in excess of twenty (20) separate occasions[5], some of which were as follows *(excerpts replicated as they appeared in the original Facebook posts):*

[5] See paragraphs 10-11 on pages 10-17 of Trial Bundle 1, "Pleadings", Statement of Case

30 March 2020

"I HAVE A FEW QUESTIONS FOR THE BOARD OF THE NCRHA AND BY EXTENSION THE MINISTER OF HEALTH (FAIL TERRANCE)

Recently the failing minister announced that around 129 million or so has been allocated to NCRHA to combat Covid 19. I want to ask the minister what checks and balances or monitoring system is going to be put in place to ensure that these funds are utilized for its intended use? Can the Minister of Health please advise the nation?

The signs are clear, the self centered CEO for NCRHA does not care about policy and protocol especially when it comes to Human Resource policy and guidelines. Does the NCRHA have a General Manager HR or a Human Resouces Department? ..... It doesnt appear so, as all decisions relating to the filling of key positions are spearheaded by a CEO who only does stuff to motivate his EGO and he also ensures HIS boys and girls are in high paying positions.

Can the CEO justify to the board of the NCRHA and more so the tax payers of this nation how his special friend Mr Mason got the position of General Manager Covid 19. Can the CEO explain why all process and protocols were breached, why wasnt this position advertised internally, why is this the fourth position given to Mr Mason.

Or is the CEO trying to saying, there is no one else qualified, or who have the tenure or seniority or experience to fill this position in all of NCRHA but the Boys and Girls in his office?

Can the failing Mr. Minister, tell us if it is true that a one Mr. Mandel is the new Hospital Manager for the Caura Hospital? Are you aware that Mr Moist (Mandel)is a close friend of the CEO and has worked closely with him at Building 39 and most recently he acted as Senior Civil Engineer. Again, why are the HR practices being breached and ignored?.... why only a few highly favoured persons of the CEO are filling these positions? What is

going on with all the other long standing employees, who are qualified and have the necessary experience but are being bypassed/ black listed by the CEO. How can this madness continue?

I want to.ask the CEO Who is in the line up for the new Arima Hospital position? is it Miss Liza or Mr Ali?

These positions should be advertised internally, or persons shortlisted based on seniority/ tenure and given the opportunity to interview or act.

Why is this basic process being overlooked and Davlin? And more so what is the board of the NCRHA DOING?

Mr Minister, of health can you please tell us, was the present CEO for NCRHA ever interviewed for the position of Hospital Manager which he holds? How did he become permanent in that position as well? Also, why dont someone do some digging into his reputation whilst he was Hospital Manager at the Maternity Hospital.

ONE MUST ASK how many projects were left undone?, What about the misappropriation of funds at Mt Hope Woman hospital during his tenure? What was Davlin doing when he was councillor? What was the state of the elevators at the Hospital? What was the state of the hospital during his time there and why was the overtime bill for staff so high?

Can the minister of health shed some light :-

It is alleged that there is a a certain person Mr. Khan who is attached to the Maintenance staff at Mt Hope Woman Hospital and operates as the Manager for Engineering who is also a fulltime employed at a private hospital. This individual racks up a monthly overtime bill of over 20,000.00 most of the times. I would like the Minister of Health to conduct an investigation into this person from then to now as the same nonsense continues as Mr Khan is a very close friend of the CEO.

The allegatiom.continues: -

It is also alleged that the overtime racket did not stop at Mt Hope Woman Hospital but happened at the Caura Hospital as well during Davlin tenure there. It is also alleged that staff were utilized to perform private jobs at a house but paid via the NCRHA payroll.

So back to the 129 million the NCRHA received, is the nation and the government confident that these funds allocated would be used for for its intended use or is it a piece of the pie for all the BOYS and GIRLS of the CEO. Could the NCRHA BOARD OR THE MINISTER OF HEALTH please advise?"

2 April 2020

"I have a few questions for the Board of the NCRHA AND THE FAILING MINISTER OF HEALTH.

Can these person shed some light or if they are aware that the CEO continues to play muscial chairs with selective staff.

1. *Is the board aware that Dr. Rampaul has been appointed for 3 months as Medical Chief of Staff at Couva. I want to know how was this person selected. Where was the add for this position. Why were more senior doctoes not selected fot his post. Can the Board inquire from its CEO.*
2. *Is the board aware that Miss Lopez was appointed Nursing Admin at couva. I want to know how was this person selected. Where was the add for this position. Why were more senior NURSES not selected.*
3. *Is the board aware that the CEO blue eue boy Mr. Mason has move from general manager operations covid to hospital administratot at couva.*

   THIS IS MASON IS VERY SPECIAL. THIS IS HIS 6TH PROMOTION IN A SHORT SPACE OF TIME.

   ONE MUST ASK WHAT IS HIS QUALIFICATION.

4. *I THE BOARD AWARE THAT Miss yard who was a business managed AED is now the Facility Manager of the Chaguanas Facility.*
5. *Is the board aware that Miss Renee former facility manager of chaguanas is now the hospital manager of arima.*

   I want to know how was this person selected. Where was the add for this position.
6. *Miss liza is now general manager operations covid.*

   Can the CEO or the board tell us what exactly is this post about. Its job description and specifications.

   One must wonder why is Davlin scampering to fix his people. Is it pay back time.? Why is Davlin bypassinf senior persons and appointing his friends.

Why is the human resources policyand guidelines being violated by Davlin and why is the HR manager so quiet.

Finally why IS THE CHAIRMAN OF THR BLARD SO QUIET AND UNCONCERN REGARDING THESE MATTERS.

Why does it seem like the CEO is the chairman of the board as well.

Please answer. This will protect the public and hold political appointees accountable."

5 April 2020

"I HAVE A FEW QUESTIONS FOR THE SELF CENTERED CEO OF THE NCRHA AND ITS BOARD.

CAN THE CEO (DAVLIN) TELL US HOW THE FOLLOWING VEHICLES ARE BEING UTILIZED BY THE NCRHA.

1. *Vehicle KIA PDH 5425 purchased by Mr. Boodram a former CEO.*
2. *Vehicle MAZDA PCP 52 Purchased by Mr. Tsoi-Fatt while he was CEO.*
3. *A shuttle registration No PDB 3496. CAN THE CEO TELL US WHO IS THE OWNER OF THIS SHUTTLE AND WHAT IS HIS DAILY CHARGE TO TRANSPORT VISITORS FROM THE MAIN ENTRANCE TO THE PBR.*

CAN HE ALSO STATE WAS THIS DONE VIA 3 QUOTE TENDER OR BY HIS SELECTION AND RECOMMENDATION.

4. *Vehicle PDU 1667 this was purchased by Davlin for his use. CAN YOU AS CEO TELL US WHAT WAS IT COST.*

It is also alleged the CEO at one point during his tenure rented a Sorento from one of his friend in Corocrite for and approximate cost of $10000 a month. IS THIS TRUE MR. CEO?

I WANT TO ASK THE CEO (DAVLIN) HOW MANY TIMES WERE HE INVOLVED IN ANY ACCIDENTS WHILE USING THE NCRHA VEHICLES. WERE THESE ACCIDENTS EVER REPORTED TO THE POLICE OR YOU FIXED IT ON YOUR OWN.

WERE YOU EVER UNDER THE INFLUENCE OF ALCOHOL WHEN ANY OF THESE ACCIDENTS OCCURED.

All these vehicles are currently parked infront of Building 39 on the compound of Mt Hope.

IS IT TRUE FOR THESE VEHICLES TO BE UTILIZED YOU AS CEO MUST GIVE APPROVAL?

While 2 vehicles the Kia and Mazda remain park there daily its alleged that the current Transport Division Manager Mr. Hinds complains daily regarding the lack of vehicle resources for use. Is it true MR CEO that currently a 12 seater van is being rented to use as a stafc shuttle?.

CAN YOU SPEAK UP MR CEO."

11th April 2020

"I HAVE A FEW QUESTIONS FOR FAILING TERRANCE AND THE WASTE OF TIME CEO DAVLIN.

CAN THESE TWO FAILURES SHED SOME LIGHT ON THE FOLLOWING: -

1. *HOW was Mrs Thomas Lewis Selected for the post of Chief Operations Officer of NCRHA?*

2. *WHAT is the qualification of Mrs Thomas Lewis?*
3. *Was Mrs Thomas Lewis selected for the post of Chief Operations Officer due to her close acquaintance with the Deputy Chairman Elveyn Edward who is her inside support on the Board?*
4. *HOW can Mrs Thomas hold the post of COO for over 2 years without any advertisement for this job? UNACCEPTABLS AND poor HR governance…*
5. *ALSO CAN THE SELF CENTERED FAILED CREATIVE DIRECTOR DAVLIN TELL US JOW THE Medical Chief of Staff designate for Arima New Hospital – Dr. Ravi Lalla was selected?*
6. *Where WAS the advertisement for this jobs such as Chief Operations Officer and Medical Chief of Staff.*

CAN FAILING TERRANCE MINISTER OF HEALTH TELL US. WE DEMAND ANSWERS."

27th April 2020

"CAN THE MINSTER OF HEALTH FSILING TERRANCE TELL US HOW … ONE Marion Mason WHO IS Ag. Regional Manager Medical Records AT NCRHA also holds the position of COMPLEX ADMINISTRATOR AT THE COUVA HOSPITAL.

WHY IS THIS PERSON RECEIVING 2 SALARIES.

Is it because he is the blue eye boy of the Ceo Davlin of Mt Hope. Or is he the one making the secret deals with contractors and receiving kick backs for Davlin.

TELL US TERRANCE.

WHY ARE YOU SO SILENCE ON THESE MATTERS. ……"

14th May 2020

"CAN THE FAILING CEO OF MT HOPE AND THE BOARD TELL US WHATS THE JUSTIFICATION FOR A ROOF TOP RESTAURANT AT MT HOPE

The failing creative director Davin has given instructions to outfit a space to creat a rooftop restaurant at Mt Hope.

1. *Just imagine blinds casting $42000.00*
2. *40 stackable chairs costing $18000.00*
3. *10 tables costing $4000.00.*

CAN DAVLIN TELL US WHAT THE RATIONALE FOR THIS?
AT THIS CRITICAL TIME PATIENTS ARE SUFFERING LIMITED TO NO DRUGS AT THE PHARMACY.
PATIENTS SURGERIES ARE BEING CANCELLED
PATIENTS ARE GIVEN POOR MEALS ON THE WARDS

THEN WHY WASTE AND SPEND THIS MONEY ON THIS NONSENSE DAVLIN THE MINISTRY OF HEALTH AND THE PERMANENT SECRETARY MUST ACT THEY MUST SUSPEND THE CEO IMMEDIATELY AND A AUDIT CONDUCTED. ATTACHED IS THE PURCHASE REQUISTION ORDERS ETC. "

15 May 2020

"CAN THE CEO (Failing DAVLIN) OF MT HOPE EXPLAIN THE FOLLOWING.

1. *Can he confirm or deny the attached purchase order for the purchase of the following items from a firm in chag which he (Davlin) Signed on the 14/ 1/2020. These items are:*
   A. sheets 4×8 quantity 28 amounting to $38000.
   B. Sheets 16×4 quantity 4 amounting to $6700.
   C. And 8 lengths of RHS steel length.
   TOTAL AMOUNT $46330.00
2. *Can the Failing Creative Director (CEO OF MT HOPE) TELL us why was this material given to one MR MOHAMMED of Arts Concept Ltd ON THE 11/2/2020 as showen in the Delivery Note attach below.*

3. *Can the CEO tell us what project is this materials being used for and why was it given to this firm. Whats so special about this project that it was not done inhouse but materials removed from NCRHA.*
4. *ON THE same Delivery Note to the top its listed as ROTARY CLUB PROJECT. Can the Ceo explain whats this project about.*

THIS PROJECT REACKS OF CORRUPTION AND MISMANAGEMENT OF MATERIALS FROM A STATE ENTERPRISE TO A PRIVATE FIRM.

I AM CALLING ON THR BOARD OF DIRECTORS AND THE PERMANENT SECRETARY AT THE MINISTRY OF HEALTH TO SUSPEND IMMEDIATELY THIS FAILING CEO AND A AUDIT BE CONDUCTED"

19 May 2020

"CAN THE FAILING, SELF CENTERED, CLUELESS WABT TI BE CREATICE DIRECTOR DAVLIN tell us

1. *How many suppliers have closed their account with the NCRHA*
2. *What is the debt the NCRHA, has currently to its suppliers?*
3. *The list below shows one supplier alone has a 9 million dollars pending, since 2019. IS THIS TRUE MR CEO.*
4. *How many accounts are still not opened due to lack of payments?*
5. *Supplier accounts are part of reoccurent expenditure, yearly which is budgeted for. Why accounts are being closed? Where did the money go?*

CAN THE PERMANENT SECRETARY AT THE MINISTRY OF HEALTH AUDIT THIS IMMEDIATELY."

21 May 2020

"CAN THE SELF CENTERED FAILING CEO OF NCRHA TELL US WHY DID THE NCRHA ENTER INTO A LOAN AGREEMENT WITH THE IDB.

CONTTACT ATTACH BELOW

CAN THE FAILING CREATIVE DIRECTOR DAVLIN TELL US.

1. *Why were House Officers who have signed this contract were pressured into signing it in a meeting almost 2 weeks ago in Bldg.39 3rd floor Conference room with themselves and Rosemarie Bachan?*
2. *Why was these house officers not allowed to seek guidance on this contract before signing and was under the threat of no signing-no work?*
3. *If these House Officers are not NCRHA workers then who are responsible for paying taxes and NIS?*
4. *How does the NCRHA plan to repay 30 thousand a month as shown on page 2. Also when is the first payment due.*
5. *Are these house officers assigned to couva. How many house officers were hired and how many patients are they seeing about.*

ANSWER US DAVLIN. DO NOT FEEL U BIG AND BAG. YOU ARE NOTHING WITHOUT THIS CEO POST. BUT REMEMBER TABLES TURN AND SOON YOU WILL GO BACK TO YOUR POST WHICH YOU ARE NOT QUALIFIED FOR."

31st May 2020

WHY ARE THEY TRYING TO INTIMIDATE STAFF.

CAN THE CEO (FAILING DAVLIN). THE COO (UNQUALIFIED TOMAS-LEWIS) AND GENERAL MANAGER HR (ANOTHER THOMAS) STOP trying to intimidate staff. This PNM gov introduced Whistle Blower Legislation to protect workers against persons like these three.

STOP YOUR EVIL WICKED WAYS. SOON YOUR TIME WILL END.

TO NCRHA STAFF CONTINUE TO SPEAK OYT AND SHARE THE INFORMATION TO EXPOSE CORRUPTION BY THESE (THREE THOMASES.)"

8 June 2020

"Can the CEO of NCRHA (Davlin) and Chief Operations Officier (Thomas-Lewis) shed some light on the rental of tents at Mt Hope hospital during Covid 19.

1. *Can these two individuals tell us who got the contract for the installation of tents for Covid 19.*
2. *Why was this contractor favored over small contractors.*
3. *Are these contractors favor pnm ones, and does the ceo have a close relationship with one whose director goes by the name Ricky.*
4. *Can the CEO and Thomas Lewis tell us if Rickel Services was awarded the contract to install these tents.*
5. *Can the Ceo and Thomas-Lewis tell us how much tents are currently rented from this individual/firm*
6. *Can the CEO Davlin tell us if the owner of Rickel Services Limited is a pnm favoured contractor and his name is Ricky.*
7. *Can FAILING DAVLIN AND USELESS THOMAS LEWIS TELL us how can the rental of 2 tents for a month with transportation cost $541, 125 dollars.*
8. *What procurement process was followed by the NCRHA Board to engage the provision of tents being used throughout NCRHA.?*
9. *What are the particulars relating to this unplanned expenditure due to COVID 19. Are there several suppliers of these tents or (1) Supplier only and the costs?*
10. *is the term of use a rental or purchase or lease.?*

ATTACHED ARE THE PURCHASE REQUISITION, THE QUOTES, PICTURES OF RICKEL SERVICES VEHICLES INSTALLING TENTS AND THE COMPANY REGISTRATION SHOWING RICKY AKA RAGHUNANAN AS A DIRECTOR.

WE DESERVE ANSWERS DAVLIN AND THOMAS LEWIS.

TIME IS COMING SOON U ALL WILL BE OUT OF BUILDING 39"

9 June 2020

"FAILING CEO DAVLIN YOU FEEL CITIZENS STUPID.

Since in this article you said we got a cheaper offer. Can you tell us:

1. *WHO IS THE CONTRACTOR?*

2. *WHATS THE NEW PRICE FOR THE RENTAL OF THE TENTS?*
3. *WHY WAS THAT CONTRACTOR VEHICLE INSTALLING TENTS AGAIN?*

Stop thinking all stupid like you. You are a fraud a liar a conman and someone who forces contractors and suppliers to give you a kick back before they are paided.

You continue more to come on you SOON."

7. The Claimant contended that the Facebook posts were inaccurate, misleading, disparaging, defamatory and malicious and highlighted the Claimant in a negative light by the use of unfounded allegations of corruption, misbehaviour in public office, nepotism and fraud.[6] He also contended that the words of the publications made by the Defendant were done in a sensational and prominent manner and with a reckless disregard as to accuracy thereof and as to whether the words were libellous. The words were published with eye-catching headlines and featured prominently on capitals and/or bold print to further dramatize the posts. The sensational tone of the publications were an act of reckless disregard geared towards maliciously misinforming the public to tarnish the Claimant's reputation and disparage him. [7]

8. The Claimant also contended that in the natural and/or literal and/or ordinary and/or inferential and /or implied meaning and/or by way of innuendo, the Facebook posts complained of meant and/or can be understood to mean that he:

a. Is a corrupt individual;
b. Is a corrupt CEO of the NCRHA;
c. Is not fit to hold public office;
d. Has poor management skills;
e. Is incompetent in his role as CEO of the NCRHA;
f. Is an unqualified CEO;

[6] Statement of Case filed on 24 June 2020, paragraph 12
[7] Paragraph 13 on page 19 of Trial Bundle 1, "Pleadings", Statement of Case

g. Mishandles public funds;
h. Misappropriates public funds;
i. Defrauds the state for his personal benefit;
j. Favours “PNM Contractors”;
k. Is discriminatory when it comes to the employment of individuals within the NCRHA;
l. Is self-serving and only looking after the interest of a certain group of people;
m. Is discriminatory when it comes to the procurement of goods and services for the NCRHA;
n. Is personally involved in the procurement of goods and services for the NCRHA;
o. Is not acting in accordance with established protocols and procedures for the hiring of staff for the NCRHA;
p. Is not acting in accordance with established protocols and procedures for procurement within the NCRHA;
q. Receives “kick-backs” from contractors and suppliers of the NCRHA;
r. Is guilty of the offence of misbehaviour in public office;
s. Is guilty of the offence of careless/dangerous driving;
t. Was involved in Motor Vehicular Accidents while using the NCRHA vehicles;
u. Is guilty of the offence of not reporting a Motor Vehicular Accident;
v. Is guilty of the offence of Driving under the Influence;
w. Is a liar;
x. Is a fraud;
y. Is a criminal.[8]

9. The Claimant also asserted that the facts and matters posted became known to a substantial but unquantifiable number of unidentifiable readers who understood the words to bear the meanings articulated above. The Claimant averred that many of

[8] Statement of Case filed on 24 June 2020, paragraph 16

these readers made further defamatory statements against him, stemming from the unwarranted statements and/or allegations.

10. Upon learning of the Defendant's allegation, the Claimant instructed his Attorneys-at-Law, to issue a Pre-Action Protocol letter on his behalf to the Defendant for defamation of character, which was served on 9 June 2020.

11. On 10 June 2020, the Defendant responded to the Claimant's Pre-Action Protocol letter, acknowledged receipt of it, vehemently apologized, noted the removal of the complained posts from his personal Facebook profile, accepted his mistake of posting the above allegations and assured the Claimant that there would not be a repeat of such actions. The Claimant was then informed by the Defendant that his personal Facebook account was hacked and that certain of these posts were generated by one "Johnny Walker." The Defendant allegedly accepted responsibility for the posts made by himself and not by "Johnny Walker".

12. The Claimant contended that the publications occurred over a span of two and a half (2 ½) months, with the publications referenced in the Defendant's last email occurring during the days 21 May 2020 and 4 June 2020. As such the publications were made within this highlighted 2.5 month period and would have been in the Defendant's purview but were not removed.

13. The Claimant contended that he has suffered shame and embarrassment due to the allegations and that the actions of the Defendant have brought him into public odium and disrepute, exposing him to public ridicule and contempt. The Claimant also asserted that his family, including his wife and children, have been severely affected by the allegations which have left them traumatized by the persistent and relentless attacks by the Defendant.

THE DEFENDANT'S CASE

14. The Defendant's pleaded case was that he was not identified as the author of the Facebook posts outlined at paragraphs 8-12 of the Statement of Case and the subsequent bundle of publications attached and marked "C". [9]

15. He also contended that he has not spoken or published any of the words outlined by the Claimant and denied that he had spoken or published any of the words complained of, to or in the presence or hearing of any of the persons outlined at paragraph 14 of the Statement of Case or any member of the public or at all. [10]

16. The Defendant denied that the words complained of referred or were understood to refer or were capable of referring to the Claimant, instead asserting that the words were more directly addressed to the Minister of Health, the NCRHA and the CEO of the NCRHA in his official capacity. [11]

17. The Defendant also denied that the words complained of bore the meanings as pleaded by the Claimant in support of their claim and contended that the words at their highest mean that there are sufficient grounds for investigating whether the Claimant has committed an act of wrongdoing. [12]

18. The Defendant in the alternative, which he denied, stated that if the words published were published by the Defendant then they were words of "heat" or "vulgar abuse"[13] on an occasion of qualified privilege[14] and the Claimant's claim was an abuse of process against the rule that a public authority ought not to be permitted to maintain a claim for defamation[15].

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[9] Paragraph 6 on page 246 of Trial Bundle 1, "Pleadings", Defence
[10] Paragraph 7 on page 246 of Trial Bundle 1, "Pleadings", Defence
[11] Paragraph 10 on pages 247-248 of Trial Bundle 1, "Pleadings", Defence
[12] Paragraph 11 on pages 247-248 of Trial Bundle 1, "Pleadings", Defence
[13] See paragraph 12 on pages 250 of Trial Bundle 1, "Pleadings", Defence
[14] See paragraph 13 on pages 250 of Trial Bundle 1, "Pleadings", Defence
[15] See paragraph 31 on pages 253 of Trial Bundle 1, "Pleadings", Defence

19. The Defendant indicated that the apology email sent by him in response to the Pre-Action Protocol letter sent by the Claimant's Instructing Attorney-at-Law, Ms Jennifer Farah-Tull, was sent on the basis of a mistaken understanding of the effect of the statement. He further contends that the posts were authored by a "JOHNNY WALKER" who compromised and had access to the Defendant's Facebook Account at the time.

THE ISSUES

20. Based on the pleadings, in order for the Claimant to succeed with his claim the following issues must be determined in his favour:

    (a) Whether the Facebook posts were published by the Defendant on his personal Facebook account and on the Facebook Group pages "TrinbagoLivesMatter" and "THE VOICE OF TnT 99%".
    (b) Whether the Defendant was responsible for the republication of the Facebook posts by Third Parties.
    (c) Whether the words complained of referred to or were capable of referring to the Claimant.
    (d) Whether the words complained of bore the meaning as asserted by the Claimant.
    (e) Whether the Defendant has failed to make out his defence of qualified privilege.
    (f) Whether the Claimant is entitled to an award of damages.

THE WITNESSES

21. At the trial the Claimant and Mr Kwasi Robinson ("Mr Robinson") gave evidence in support of the Claimant's case. The Defendant gave evidence to support his defence.

WHETHER THE FACEBOOK POSTS WERE PUBLISHED BY THE DEFENDANT ON HIS PERSONAL FACEBOOK ACCOUNT AND ON THE FACEBOOK GROUP PAGES "TRINBAGOLIVESMATTER" AND "THE VOICE OF TNT 99%".

22. It was submitted on behalf of the Claimant that the Defendant admitted in his witness statement that he published the Facebook posts.

23. Counsel for the Defendant argued that the Claimant has failed to established that the Facebook posts save and except the post dated 9 June 2020 were published as he failed to provide proof that they were accessed and read by third parties.

24. **Gatley on Libel and Slander**[16] defines the term "defamation" as:

> "The term 'defamation' is used as a collective term for the torts of libel and slander. It is committed when a person publishes words or matter to a third party that contain an untrue imputation that harms the reputation of the claimant. Broadly speaking, if the publication is made in a permanent form or is broadcast or is part of a theatrical performance, it is a libel."

25. **Duncan and Neil on Defamation** explained the importance of proving publication in a defamation claim at paragraph 8.01 as:

> "No action can be maintained for libel or slander unless there is a publication, that is a communication of the statement complained of to some person other than the claimant. Thus there is no publication and therefore no action can lie if the defamatory matter is communicated to the claimant themselves.
>
> ….
>
> Moreover in order to bring an action against a particular defendant it is necessary to prove that the defendant published the statement or, though

[16] 12th ed at page 6 paragraph 1.5

the defendant was not themselves the publisher, that, in the circumstances, they were responsible for the publication."

26. One of the leading authorities on defamation has drawn a distinction between proving publication in a book and a newspaper and that on the internet. **Gatley on Libel and Slander**[17] explained that:

> "Where material has been issued to the public within the jurisdiction in the form of a book or newspaper, the claimant is not required to plead or prove publication to particular persons. But the same is not true of publication on a web site. There may be evidence as to how many times the material was accessed or it may be legitimate to draw an inference about that from the circumstances, but there is no presumption of law that in such a case there has been a substantial publication within the jurisdiction."

27. **Halsbury's Laws of England**[18] explained that:

> "An individual who posts defamatory material on the internet is a publisher of that material if it is subsequently accessed and read by a third party." (Emphasis added).

28. Leading English cases have adopted similar positions. Morland J in the English case of **Godfrey v Demon Internet Ltd**[19] was of the view that there was publication of a defamatory post once a customer of the defendant accessed the defendant's website.

29. The learning in **Al Amoudi** v **Brisard**[20] and **Jameel** v **Dow Jones & Co**[21] established that there is no presumption that material which appeared on the internet has been

[17] 11 ed at para 6.2
[18] Volume 32 (2012) at paragraph 566
[19] [2001] QB 201 at 208-209
[20] [2006] 3 All ER 294
[21] [2005] EWCA Civ 75

published. The burden of proving that the statement complained of was published to a third party rests on the Claimant.

30. In order to prove publication of statements posted on the internet which are allegedly defamatory, Eady J in **Carrie v Tolkien**[22] summed up the position as: "It will not suffice merely to plead that the posting has been accessed "by a large but unquantifiable number of readers". There must be some solid basis for the inference[23]".

31. While the aforesaid learning was with respect to information placed on a website, it is equally applicable to information posted on any social media platforms. Based on the aforesaid legal principles, the law does not presume that once material is posted on the internet such information is published as the mere act of posting is not by itself a publication. In those circumstances, the onus is on the Claimant to prove that the posting has been accessed and read by third parties.

32. The onus was on the Claimant to prove that the Facebook posts were published by the Defendant. To do so the Claimant had to prove that the Defendant posted them and that they were subsequently accessed and read by third parties.

33. In the instant case, the Defendant stated in his witness statement that he made the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020. He confirmed this position in cross examination where he admitted that he made those posts on his personal Facebook page and with respect to the post dated 25 March 2020 also on the Facebook Group page TrinbagoLivesMatter between the period March 2020 and June 2020**.** He could not recall if he had made any other posts than those he admitted to posting.

[22] [2009] EWHC 29 (QB)
[23] Ibid para 18

34. Based on this admission by the Defendant, the Claimant has proven that the Defendant made 7 posts on his Facebook page, namely those dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020. With respect the post dated 25 March 2020 he also posted it on the Facebook group page TrinbagoLivesMatter. However, the Defendant did not admit to posting those dated 24 March 2020, 2 April 2020, 11 April 2020, 27 April 2020, 21 May 2020 and 31 May 2020.

35. Therefore, the onus was on the Claimant to prove that the Defendant made those posts. To do so the Claimant relied on the email dated 10 June 2020 which the Defendant wrote in response to the Claimant's Pre-Action Protocol letter dated 9 June 2020 which was exhibit D.T. 6 of the Claimant's witness statement. In the Pre-Action Protocol letter, the Claimant's Attorney-at-Law stated that from 1 April 2020 to 10 June 2020, the Defendant had made several false and defamatory posts about the Claimant via several Facebook posts on the Defendant's page www.facebook.com/naresh.n.siewah. The said letter included the details of the posts dated 8 June 2020 and 9 June 2020.

36. Exhibit D.T. 7 of the Claimant's witness statement was the Defendant's response which was an email dated 10 June 2020, where the Defendant apologized for any discomfort to the Claimant and where he indicated he removed all posts from his Facebook account.

37. According to the Claimant, the Defendant subsequently sent an email dated 15 June 2020[24], addressed to the Claimant's Attorneys-at-Law with an attached letter and supporting documents which claimed that the postings made by him were the result of his Facebook profile being hacked and compromised by someone with the Facebook profile entitled "JOHNNY WALKER", also called "John Narine" and it was the said "Johnny Walker" who had made the posts for a period of beyond two months

[24] Exhibit D.T 8 of the Claimant's witness statement

and that they were done at a time when he was not using his profile. However, the Defendant admitted that he posted the salaries of the Claimant and CFO of the NCRHA as well as the information pertaining to an IDB Loan. The email ended with him noting his readiness to apologise only for the postings made by himself and not the ones purported to be made by the said "Johnny Walker" and also his eagerness to have this matter resolved immediately.

38. The admission made by the Defendant in his witness statement that he made some of the Facebook posts during the period 25 March to 9 June 2020 and confirmed in cross examination, undermined the credibility of the Defendant's assertion that he did not have access to his Facebook account for a period of beyond two months, and that it was "JOHNNY WALKER" who had hacked his personal account and made the posts. In my opinion, the Defendant had access to his personal Facebook account during the material time.

39. In my opinion, the admission by the Defendant and his apology in the email dated 10 June 2020 were with respect to the Facebook posts during the period 1 April 2020 to 10 June 2020. This admission included those posts which the Defendant did not admit in his witness statement that he posted namely 2 April 2020, 11 April 2020, 27 April 2020, 15 May 2020, 21 May 2020 and 31 May 2020. With respect to the post dated 24 March 2020 the Defendant admitted in cross examination that he made the post dated 24 March 2020.

40. Therefore, the Claimant has proven that the Defendant made the posts dated 24 March 2020, 25 March 2020, 30 March 2020, 2 April 2020, 5 April 2020, 11 April 2020, 27 April 2020, 14 May 2020, 15 May 2020, 19 May 2020, 21 May 2020, 31 May 2020, 8 June 2020 and 9 June 2020.

41. I now turn to the second limb to prove publication which is that third parties had read the posts.

42. The Claimant's pleadings and his witness statement was that Facebook is the most popular and leading social media platform/website which enjoys substantial online readership in Trinidad and Tobago and the world at large with a wide audience. Notably, the Claimant did not state in his witness statement how many persons were his friends, relatives and acquaintances who had read the said posts.

43. In cross examination, the Claimant maintained that the Facebook posts were seen by possibly millions of persons but he accepted that there was nothing in the screen shots he provided that identified the number of persons who may have seen it. With respect to the post dated 8 June 2020, the Claimant testified in cross examination that he first saw it within 24 hours of its posting as a number of persons had pointed it out to him. In relation to the screenshots of the posts at Exhibit DT2 and DT3 of his witness statement, he stated that he had taken those screenshots and other screenshots had been provided to him by concerned individuals. He could not recall which of the screenshots he had taken and which ones were provided by other individuals.

44. Although the Claimant filed a hearsay notice to admit into evidence the comments from "John Cambridge" and "Frank Castle" as proof that third parties had read the said posts, in my opinion, those comments did not form part of the evidence that they were third parties who saw the Facebook posts as the Claimant failed to call them as witnesses in compliance with Rule 30.7(6) CPR as the Defendant had filed and served a counter-notice to the Claimant's hearsay notice dated 27 September 2021.

45. Mr Robinson stated in his witness statement that he saw several of the posts made by the Defendant in May and June 2020 about the Claimant. He also saw the comments made by persons which were disparaging to the Claimant.

46. However, in cross examination Mr Robinson admitted that he did not see any posts in March and April 2020. Yet he testified that he had seen more than six of the

Facebook posts but he did not adequately identify them in his witness statement. He also admitted that he did not attach screen shots for four of the Facebook posts which he had seen.

47. Mr Robinson testified in cross examination that the second screenshot he had exhibited to his witness statement had received 2 shares and it was likely, based on the algorithm and what was being discussed on the Facebook platform, that it may have been seen by millions but due to the inflammatory nature of the post, some persons may not have interacted with it online and may have shared it privately instead via screenshots or other methods.

48. K.R 1 was the exhibit which he relied on as screen shots of the Facebook posts which he attached. The first document was a reproduction of comments on a post. There was no date on the post and there are 4 "shares" and 2 "comments". The comments were by Karen Mack, Amelia Hosein, the Defendant and Frank Castle. There were no reactions referred to in the screenshot. The second document appeared to be a Facebook post dated 9 June 2020 to which was attached a comment from John Cambridge.

49. Mr Robinson also testified in cross examination that he was familiar with social media and used all social media platforms, particularly Facebook. He also agreed that Facebook posts contain text and narrative as well as the identity of the poster. It would usually contain a statement of the activity that the poster is engaging in, media in the form of a video or picture or a shared link and it would include the date and time the post was made. Thereafter, Facebook users could react to the post with emojis or by posting a comment and there would be a record of the number of shares and comments made relative to the post.

50. I have attached very limited weight to Mr Robinson's evidence on the issue of the posts being read by third parties, as he attached only 2 screenshots which were of little or no value in proving that third parties read the posts. Further, Mr Robinson's

evidence on how the social media platform Facebook operates was a lay person's opinion as he was not deemed an expert in this field.

51. The Defendant stated in his witness statement that the post dated 8 June 2020 was shared approximately 249 times and that he was aware that when a post was shared by an individual (the sharer) on Facebook it only became accessible to persons who are friends of the sharer depending on the privacy settings of the sharer. He also stated at paragraph 40 of his witness statement that he knew that Mr Phillip Alexander ("Mr Alexander") a well known political activist and former leader of the Progressive Empowerment Party publicly shared the post as well a live video, which contained other assertions not made by him and the said video was shared far more than 249 times.

52. Based on the Defendant's evidence in chief there was no need for the Claimant to prove that the post dated 8 June 2020 was published as the Defendant admitted it was.

53. The Defendant also stated at paragraph 45 his witness statement that he considered it his duty to raise some of the issues publicly and he had used his Facebook profile to do so and the posts were read by his friends, relatives and acquaintances on his Facebook profile and most posts were only "liked" or "commented" on three to four times. This evidence was unchallenged as he was not cross examined on it.

54. In my opinion, the posts which the Defendant were referring to at paragraph 45 of his witness statement were those which he admitted to posting. He was not cross examined on whether this admission was with respect to other posts which he did not admit to posting. The Defendant was also not cross examined on how many friends, relative and acquaintances were on his personal Facebook page or if this was also the same position with respect to the aforesaid two Facebook Groups. In the absence of this evidence and taking into account the very limited evidence of Mr Robinson and the Claimant, it was reasonable for me to conclude that the

publication of the posts which the Defendant admitted in his witness statement he posted, were the same number of persons who read the post dated 8 June 2020.

55. In my opinion, there was cogent evidence that the post dated 8 June 2020 was published to at least 249 persons. There was also credible evidence that the posts which the Defendant admitted he posted were published on the Defendant's personal Facebook page to at least the Defendant's friends, family and acquaintances. However, there was no cogent evidence to support a finding that the other posts which the Defendant did not admit to posting dated 2 April 2020, 11 April 2020, 27 April 2020, 15 May 2020, 21 May 2020 and 31 May 2020 were published. Having failed to prove publication of those posts, the only posts which the Court has to determine any liability of the Defendant are for the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020.

WHETHER THE DEFENDANT WAS RESPONSIBLE FOR THE REPUBLICATION OF THE FACEBOOK POSTS BY THIRD PARTIES

56. The Claimant pleaded that several local news reporting websites and newspapers, all of which also share an international readership such as the Daily Express, Newsday and Looptt.com published articles written with diverging facts to the Facebook posts written by the Defendant which have resulted in more persons searching and reading the original posts by the Defendant.

57. The authors of the text **Defamation Law, Procedure and Practice**[25] states that A will be responsible for the repetition by B of a defamatory statement told by A to B, if A has authorized or secured the repetition by B; where there was a legal or moral

[25] David Price and Korieh Duodu 3rd ed at para3-09

obligation on the part of B to repeat it; or where the repetition by B was the natural consequence of the publication by A to B.

58. The Claimant's witness statement was consistent with his pleaded case. He only annexed one article which was published by CNC 3. The Claimant accepted in cross examination that he had referred to the CNC3 article in his witness statement but he was unable to recall its contents. He also testified that the document at page 256 of the Trial Bundle on the Pleadings was an article from the Trinidad Express by Ms Nikita Braxton-Benjamin and dated 16 June 2020. He agreed that there was reference to a press release from the NCRHA in the said article. He explained that he was asked for comment by a number of newspapers and television stations on the "tent issue" (which was in the posts dated 8 and 9 June 2020 respectively).

59. The Defendant's consistent evidence was that the post dated 8 June 2020 was subsequently republished by Mr Alexander who also made a "live" video. However, he stated that many assertions made by Mr Alexander were not in the post dated 8 June 2020. With respect to the post dated 9 June 2020, the Defendant's consistent evidence was that Mr Alexander's statement went further than the information in his post.

60. In my opinion, the Defendant was not responsible for the republication of the post by Mr Alexander and in the local newspapers as there was no evidence that the Defendant authorised Mr Alexander or any local newspaper to repeat the information in any of the Facebook posts. There was also no evidence that there was a legal or moral obligation on the part of any third party to repeat the information in any of the Facebook posts. Even if the repetition of the words were a natural consequence, the Defendant was still not responsible for any of the republications as the evidence of the Claimant and the Defendant was that the information in the republications were not identical to that authored by the Defendant.

WHETHER THE WORDS COMPLAINED OF REFERRED TO OR WERE CAPABLE OF REFERRING TO THE CLAIMANT

61. In my opinion, the Claimant was identified in the posts dated 25 March 2020, 30 March 2020, 2 April 2020, 5 April 2020, 11 April 2020, 27 April 2020, 14 May 2020, 15 May 2020, 19 May 2020, 21 May 2020, 31 May 2020, 8 June 2020 and 9 June 2020. In the post dated 25 March 2020 reference is made to "Davlin is continuing running a RHA". In the post dated 30 March 2020 reference is made to "CEO of NCRHA Davlin". In the post dated 2 April 2020, the words "the CEO continues to play musical chairs with selective staff", "Why is Davlin bypassing senior persons and appointing his friends" and "Why is the human resources policy and guidelines being violated by Davlin" were used. In the post dated 5 April 2020 the words "CEO (Davlin)" were used. In the post dated 11 April 2020 the words "CEO Davlin" and "SELF CENTERED FAILED CREATIVE DIRECTOR DAVLIN" were used. In the post dated 27 April 2020 the words "Ceo Davlin of Mt Hope" were used.

62. Similarly, in the post dated 14 May 2020 the words "FAILING CEO OF MT HOPE" and "CAN DAVLIN TELL US WHAT THE RATIONALE FOR THIS" were used. In the post dated 15 May 2020 the words "CAN THE CEO (Failing DAVLIN) OF MT HOPE" and "Can the Failing Creative Director (CEO OF MT HOPE) TELL us why" were used. In the post dated 19 May 2020 the words "Failing, Self Centered, Clueless….Davlin" were used. In the post dated 21 May 2020 the words "CEO OF NCRHA", "FAILING CREATIIVE DIRECTOR DAVLIN" and "ANSWER US DAVLIN" were used. In the post dated 31 May 2020 the words "CEO (FAILING) DAVLIN" were used. Finally, in the post dated 8 June 2020 the words used were "CEO of NCRHA (Davlin)" and in the post dated 9 June 2020 the words used were "Failing CEO Davlin".

WHETHER THE WORDS COMPLAINED OF BORE THE MEANING AS ASSERTED BY THE CLAIMANT

63. It is settled law that the onus is on the Claimant to set out the meaning of the words of each publication separately (**Sube v News Group Newspapers Ltd (No 2)**[26]**.**

64. I accept that the Claimant has not set out the meaning of each separate publication. In my opinion this was not fatal to his claim as he has set out the meaning of all the Facebook posts.

65. Sir Thomas Bingham MR in **Skuse v. Granada Television Limited**[27] laid down the approach to be adopted by a Judge in the determination of the defamatory meaning of the words complained of where the Judge is sitting without a jury. He stated that:

> "(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once in 1985.
>
> (2) 'The hypothetical reasonable reader [or viewer] is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.' (per Neill L.J., Hartt v. Newspaper Publishing PLC, unreported, 26th October, 1989 (Court of Appeal (Civil Division) Transcript No. 1015): our addition in square brackets).
>
> (3) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the

[26] [2018] 1 WLR 5767 at page 5775C-E
[27] (1996) EMLR 278 at 285-287

material in issue. In the present case we must remind ourselves that this was a factual programme, likely to appeal primarily to a seriously minded section of television viewers, but it was a programme which, even if watched continuously, would have been seen only once by viewers many of whom may have switched on for entertainment. Its audience would not have given it the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article. In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer we are entitled (if not bound) to have regard to the impression it made on us.

(4) The court should not be too literal in its approach. We were reminded of Lord Devlin's speech in Lewis v. Daily Telegraph Ltd. [1964] A.C. 234 at 277: 'My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.'

(5) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally (Sim v. Stretch [1936] 2 All E.R. 1237 at 1240) or would be likely to affect a person adversely in the estimation of reasonable people generally (Duncan & Neill on Defamation, 2nd edition, Paragraph 7.07 at p. 32).

(6) In determining the meaning of the material complained of the court is "not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words" (Lucas-Box v. News Group Newspapers Ltd [1986] 1 W.L.R. 147 at 152H).

(7) The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear? (Slim v. Daily Telegraph Ltd. above, at p. 176.)"

66. The aforesaid principles were approved and adopted by the Privy Council in **Bonnick v Morris**[28]. Further, in **Bonnick,** Lord Nicholls (in dealing with the single meaning rule) stated the law at paragraph 21 as:

> "The 'single meaning' rule adopted in the law of defamation is in one sense highly artificial, given the range of meanings the impugned words sometimes bear: see the familiar exposition by Diplock L.J. in Slim v. Daily Telegraph (1968)2 QB 157, 171-172. The law attributes to the words only one meaning, although different readers are likely to read the words in different senses. In that respect the rule is artificial. Nevertheless, given the ambiguity of language, the rule does represent a fair and workable method for deciding whether the words under consideration should be treated as defamatory. To determine liability by reference to the meaning an ordinary reasonable reader would give the words is unexceptionable."

[28] (2002)UKPC 31

67. In this jurisdiction the Court of Appeal in **Kayam Mohammed and ors v Trinidad Publishing Company Limited and ors**[29] laid down and approved of the following principles after citing **Bonnick v Morris:**

> "11. The Court should therefore give the article the natural and ordinary meaning the words complained of would have conveyed to the notional ordinary reasonable reader, possessing the traits as mentioned by Lord Nicholls, and reading the article once. The natural and ordinary meaning refers not only to the literal meaning of the words but also to any implication or inference that the ordinary reasonable reader would draw from the words. Thus in Lewis –v- Daily Telegraph Ltd, [1964] AC 234, 258 Lord Reid stated:
>
> > 'What the ordinary man would infer without special knowledge is generally called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. 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.'
>
> 12. And Lord Morris in Jones v Skelton [1963] 1 W.L.R. 1363, 1370-1371 stated:
>
> > 'The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the

[29] Civ Appeal No 118 of 2008

ordinary and natural meaning of words....The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not filtered by any strict legal rules of construction would draw from the words.'

13. It is also relevant to note that the words have only one correct natural and ordinary meaning. So that for example in Charleston v News Group Newspapers Ltd [1995] 2 AC 65 Lord Bridge, after referring to the fact that the natural and ordinary meaning of the words may include any implication or inference stated (at p. 71):

> 'The second principle, which is perhaps a corollary of the first, is that although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it.'

14. Where, as in this jurisdiction, the Judge sits without a jury, it is his function to find the one correct meaning of the words. Although when considering the defence of Reynolds privilege the Court must have regard to the range of meanings the words are capable of bearing as I will mention below, it is still the function of the Judge as regards the meaning of the words complained of to find the single meaning that they do convey. That does not mean that where an article levels a number of allegations as is the case here, that it has only one meaning. What it does mean is that where there are possible contradictory meanings of the words, the Court cannot recognise,

what may be the reality, that some reasonable readers will construe the words one way and others another way. The Court must determine the one correct meaning out of all the possible conflicting or contradictory interpretations.

15. What meaning the words convey to the ordinary reasonable reader is a question of fact to be found by the Judge..."

68. In assessing the meaning of each Facebook post Griffith J in **Webb v Jones**[30] referred to the Supreme Court of the UK judgment in **Stocker v Stocker**[31] which discussed the nature of social media at paragraphs 41-44 as:

"41. The fact that this was a Facebook post is critical. The advent of the 21st century has brought with it a new class of reader: the social media user. The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read.

42. In Monroe v Hopkins [2017] EWHC 433 (QB); [2017] 4 WLR 68, Warby J at para 35 said this about tweets posted on Twitter:

"The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a)

[30] [2021] EWHC 1618 (QB)
[31] [2020] AC 593

matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."

43. I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.

44. That essential message was repeated in Monir v Wood [2018] EWHC (QB) 3525 where at para 90, Nicklin J said, "Twitter is a fast moving medium. People will tend to scroll through messages relatively quickly." Facebook is similar. People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting. Some observations made by Nicklin J are telling. Again, at para 90 he said:

> "It is very important when assessing the meaning of a Tweet not to be over-analytical. … Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader."

69. I will now examine the meaning of each of the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020.

70. In the post dated 25 March 2020 the Defendant posed several questions to the Board of the NCRHA and the Minister of Health about: the person who is the Manager of Stores at the NCRHA not being qualified for the position; the allegation that he was deliberately put in that position to arrange kickbacks for the CEO; the competence of the Manager for Cleaning Department at Mt Hope; the allegation that the said person was collecting two salaries; the allegation that the doctor who was appointed medical chief of staff had bypassed other senior clinical doctors who were qualified for the said position; allegations that the CEO is abusing staff and sending them on leave, while also demoting, bypassing and blacklisting senior staff members; and allegations of pilfering of toiletries at the Chaguanas Health Facility.

71. The natural and ordinary meaning of the words in this post are that the Claimant is a corrupt individual, who has defrauded the NCRHA for his personal benefit and is therefore not fit to hold the office of CEO of the NCRHA and public office; the Claimant only looks after certain persons and discriminates when it comes to the hiring of contractors by the NCRHA; he has not followed the established protocols for the hiring of staff in the NCRHA and he has received "kick backs" from contractors.

72. The sting in this publication are the words "kickbacks from contractors and suppliers for the CEO and his boys and girls"; "race, nepotism and favoritism at its highest"; and "word on the ground is that this CEO is aspiring to be an MP and next Minister of Health. IS that what the PNM party really stand for?" The use of block letters in posing the question "WHAT IS THE BOARD DOING. WHY IS THE CEO NOT BEING CALLED TO ACCOUNT FOR HIS ACTION?" was also deliberate as they would have caused the readers to pause at this aspect of the post.

73. Again the use of block letters in the headline " CAN THE NCRHA BOARD AND THE Minister OF HEALTH" was designed by the Defendant to command the reader's attention given that this post was dated about 2 weeks after Covid 19 was declared a pandemic.

74. The post of 30 March 2020 were in the form of questions and statements for the Board of the NCRHA and the Minister of Health. The heading of the post which was stated in block letters "I HAVE A FEW QUESTIONS FOR THE BOARD OF THE NCRHA AND BY EXTENSION THE MINISTER OF HEALTH (FAIL TERRANCE)" was designed to command the attention of the readers given that this was during the same month Covid 19 was declared a pandemic. This post raised the improper use of $129 million which had been allocated by the NCRHA to combat Covid 19. The statements made against the Claimant were that as CEO of the NCRHA he was not following HR policies and guidelines for the hiring of staff for certain named positions, but had instead appointed certain named persons to specific positions in the NCRHA breaching the HR policy and guidelines; he also misappropriated funds at the Mt Hope Women's Hospital and allowed an "overtime racket" which has also happened at the Caura Hospital. The post also stated that the staff was utilized to perform private jobs at a house but paid with funds from the NCRHA.

75. In my opinion, the ordinary meaning of these words were that the Claimant is corrupt, he misappropriated public funds from the NCRHA; he engaged in favoritism of certain members of staff over others in the employment of individuals within the NCRHA, and he did not follow the established protocols and practices for hiring of staff in NCRHA. The sting in the post were in the use of the words "the self centered CEO for NCRHA"; "a CEO who only does stuff to motivate his EGO and also ensures HIS boys and girls are in high-paying positions"; and "overtime racket".

76. The next post was dated 5 April 2020. The heading in this post which was designed to command the reader's attention was in block letters, namely "I HAVE A FEW QUESTIONS FOR THE SELF CENTERED CEO OF THE NCRHA AND ITS BOARD" and "CAN THE CEO (DAVLIN) TELL US HOW THE FOLLOWING VEHICLES ARE BEING UTILIZED BY THE NCRHA". In this post four questions were listed but there are other specific questions which are posed to the Claimant as CEO. The questions are about the use of two motor vehicles of 2 formers CEO's of the NCRHA; the purchase and cost associated with a shuttle which is used to transport visitors from the Main Entrance

to the PBR; the cost of the motor vehicle purchased by the Claimant for his use; and the Claimant's rental of a motor vehicle from his friend in Cocorite for $10,000.00 per month. The post also asked the Claimant how many accidents he was involved in while driving vehicles owned by the NCRHA and if he was ever under the influence of alcohol when any of the accidents occurred. The post asked why the vehicles which were purchased for the former CEO's was not being used when the Transport Division Manager complains daily about the lack of vehicles to use and if the NCRHA is renting a 12 seater van to use as shuttle.

77. In my opinion, the natural and ordinary meaning of this post was that the Claimant is self-serving and looking out for the interest of certain persons, he is guilty of driving under the influence of alcohol while using NCRHA vehicles, he was involved in an accident while driving NCRHA vehicle and he has poor management skills when coming to allowing the use of the vehicles of the two former CEOs.

78. The sting in this post were the words used in block letters, namely: "I WANT TO ASK THE CEO (DAVLIN) HOW MANY TIMES WERE HE INVOLVED IN ANY ACCIDENTS WHILE USING THE NCRHA VEHICLES WERE THESE ACCIDENTS EVER REPORTED TO THE POLICE OR YOU FIXED IT ION YOUR OWN."; "WERE YOU EVER UNDER THE INFLUENCE OF ALCOHOL WHEN ANY OF THESE ACCIDENTS OCCURED (sic)"; and "IS IT TRUE FOR THESE VEHICLES TO BE UTILIZED YOU AS CEO MUST GIVE APPROVAL?"

79. The post dated 14 May 2020 was in the form of a question posed to the Claimant and the Board of the NCRHA. It was in block letters to command the attention of the reader. It stated "CAN THE FAILING CEO OF MT HOPE AND THE BOARD TELL US WHATS THE JUSTIFICATION FOR A ROOF TOP RESTAURANT AT MT HOPE". The matters raised in the post were the alleged instructions by the Claimant as the CEO of the NCRHA to outfit a roof top restaurant at Mt Hope in circumstances where there was no medication for patients, poor meals on the wards and surgeries were being cancelled. It also set out the cost for outfitting the said roof top restaurant. It ended

by calling upon the Ministry of Health and the Permanent Secretary to immediately suspend the Claimant as CEO and conduct an audit of the attached purchase requisition orders.

80. The sting in the post were the words written in block letters in the said posts and in particular the words "FAILING CEO OF MT HOPE" and "THEN WHY WASTE AND SPEND THIS MONEY ON THIS NONSENSE DAVLIN". In my opinion, the natural and ordinary meaning of this post was that the Claimant was an incompetent CEO of the NCRHA, as he had exercised poor judgment in the allocation of funds from patient care to a restaurant.

81. The next post was dated 19 May 2020. The attention grabbing headline of this post in block letters was " CAN THE FAILING, SELF CENTERED, CLUELESS WABT TI BE CREATICE (sic) DIRECTOR DAVLIN". In this post questions were posed to both the Claimant and the Permanent Secretary in the Ministry of Health. The direct questions to the Claimant concerned suppliers who had closed their accounts with the NCRHA, the debts of the NCRHA to suppliers, whether it is accurate that one supplier was owed $9 million since 2019, how many accounts were still not open due to a lack of payments, an enquiry into why accounts were closed and where the money to pay those accounts had gone. The post ended by calling upon the Permanent Secretary in the Ministry of Health to audit this issue immediately. The sting in this post were the words written in block letters in the heading.

82. In my opinion, the ordinary and natural meaning of this post was that the Claimant, as CEO had mismanaged the finances of the NCRHA to the extent that its suppliers have not been paid since 2019, the NCRHA is owing suppliers and suppliers have closed their accounts.

83. The post dated 8 June 2020 was directed to the Claimant and the Chief Operations Officer, Mr Thomas- Lewis. In this post, the subject matter was the rental of tents at the Mt Hope hospital during Covid 19. The questions concerned who received the

contract for the installation of tents for Covid 19, why that contractor had been favoured over small contractors, whether the contractor(s)were PNM, whether the CEO had a close relationship with one whose director goes by the name Ricky, whether Rickel Services was awarded the contract to install these tents, the cost of the tents, whether the owner of Rickel Services is a PNM favoured contractors, and what procurement process was used by the Board of the NCRHA for the provision of tents. The sting in this post were the words in block letters that "TIME IS COMING SOON U ALL WILL BE OUT OF BUILDING 39" and the reference to the Claimant as "FAILING DAVLIN".

84. In my opinion, the natural and ordinary meaning on this post was that the Claimant is corrupt as he favoured "PNM Contractors', he only looks after the interest of certain persons, he is incompetent as the CEO of the NCRHA, unfit to hold public office and has poor management skills as he failed to use any proper procurement process to retain the contractor Rickel Services for the supply of tents at Mt Hope for Covid 19.

85. The last pleaded post was dated 9 June 2020. This post appeared to be a follow up post to that dated 8 June 2020 and it was addressed to the Claimant. It is headed in block letters to command the reader's attention with the words " FAILING CEO DAVLIN YOU FEEL CITIZENS STUPID". In this post the three questions in relation to the supply of tents were who was the contractor, what was the new price for rental of the tents and why was that contractor's vehicle installing tents again. The sting in that post ended with the Defendant calling the Claimant a stupid, fraud, liar, conman and someone who forces contractors and suppliers to give a kick back before they are paid.

86. In my opinion, the natural and ordinary meaning of this post was that the Claimant is corrupt, not fit to hold office, mishandled public funds, favoured PNM contractors, he is personally involved in the procurement of good and services for the NCRHA,

received “kick backs” from contractors and suppliers of the NCRHA, and is a fraud. The sting in this post was the use of the words in block letters in the heading.

87. In light of my aforesaid assessment and analysis the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020 had a defamatory meaning of the Claimant. In my opinion the Defendant deliberately intended to lower the Claimant’s reputation in the eyes of the public. It was reasonable that right thinking members of society would have formed the view that the Claimant was corrupt, mismanaged public funds and misappropriated public funds for his personal use; was not fit to hold public office, defrauded the State for his personal benefit and is an incompetent CEO of the NCRHA, who favoured certain “PNM Contractors”; did not follow the HR procedures of the NCRHA in the employment and staffing of individuals within the NCRHA but only sought the interest of certain persons, he was personally involved in the procurement of goods and services for the NCRHA and deliberately chose certain persons over others, he received “kick-backs” from contractors and suppliers of the NCRHA, he was guilty of the offence of careless/dangerous driving and the offence of driving under the Influence.

WHETHER THE DEFENDANT HAS FAILED TO MAKE OUT HIS DEFENCE OF QUALIFIED PRIVILEGE

88. The defence of Reynolds privilege arose from the House of Lords decisions in **Reynolds v Times Newspapers Limited**[32], where the defence of qualified privilege was extended to cover the situations where a media organization sought to communicate information regarding matters of public concern. In **Reynolds**, the House of Lords established a new variant of qualified privilege in which less emphasis was placed on the traditional, reciprocal duty and interest test, and more on the question of whether the publication was on a matter of public interest and whether

[32] [2002] 2 AC 127

it was the product of responsible journalism (with the issue of malice subsumed within this latter element).

89. To determine whether the **Reynolds** privilege applies there are three questions to be posed:
    (a) whether the subject matter of the publication was of sufficient public interest;
    (b) whether it was reasonable to include the particular material complained of; and
    (c) whether the publisher met the standards of responsible journalism.

90. It is only if the Defendant satisfies all three questions that it can successfully rely on the **Reynolds** privilege defence. The aforesaid test was approved by the Privy Council in **Bonnick Morris** [33] and the Supreme Court in **Flood v Times Newspapers[34]** and endorsed by the Court of Appeal in this jurisdiction in **Kayam Mohammed[35].**

91. In considering the **Reynolds** privilege defence, the first question for the Court to determine is whether the subject matter of the publication concerned a matter of public interest. What is in the public interest is a matter of law to be determined by the Court (**Gatley on Libel and Slander**[36]). Lord Hoffman in the House of Lords decision of **Jameel & Ors v Wall Street Journal Europe SPRL**[37] stated that the approach to be adopted by the Court in determining the first question is:

> "The first question is whether the subject matter of the article was a matter of public interest. In answering this question, I think that one should consider the article as a whole and not isolate the defamatory statement…"

[33] [2003] 1 AC 300
[34] [2012] UKSC 11
[35] Civ Appeal 118 of 2008
[36] 12th Ed at para 15.6
[37] [2006]UKHL 44

92. In determining what matters are of public interest and those which are not, the Courts have recognised that not all matters that the public may be interested in are matters of public interest. As Lord Hoffman put it (at paragraph 49) in **Jameel**.

> "The question of whether the material concerned a matter of public interest is decided by the judge. As has often been said, the public tends to be interested in many things which are not of the slightest public interest and the newspapers are not often the best judges of where the line should be drawn. It is for the judge to apply the test of public interest."

93. Baroness Hale of Richmond (at paragraph 147) in **Jameel** confirmed that:

> "there must be a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public - the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it."

94. Lord Bingham of Cornhill in the Court of Appeal decision in **Reynolds TD v. Times Newspapers Limited**[38] described matters that are of public interest as:

> "By that we mean matters relating to the public life of the community and those who take part in, including within the expression 'public life' activities such as the conduct of government and political life, elections … and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure,

[38] [1998]EWCA Civ 1172 at Part XIX Lines 2-5

but excluding matters which are personal and private, such that there is no interest in their disclosure."

95. The next question is whether it was reasonable to include the words complained of. In **Jameel**, Lord Hoffman explained the approach to be taken by the Court when examining this question as:

> "51. If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the article. But whereas the question of whether the story as a whole was a matter of public interest must be decided by the judge without regard to what the editor's view may have been, the question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. And on that question, allowance must be made for editorial judgment. If the article as a whole is in the public interest, opinions may reasonably differ over which details are needed to convey the general message. The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are, ex hypothesi, in the public interest, too risky and would discourage investigative reporting.

96. In determining whether the Defendant met the standards of responsible journalism, the Court must consider the non-exhaustive list of considerations in **Reynolds** which were listed at paragraph 62 in **Kayam Mohammed** (supra) as:

(a) 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.

(b) The nature of the information, and the extent to which the subject-matter is a matter of public concern.

(c) 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.

(d) The steps taken to verify the information.

(e) The status of the information.

(f) The allegation may have already been the subject of an investigation which commands respect.

(g) The urgency of the matter. News is often a perishable commodity.

(h) 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.

(i) Whether the article contained the gist of the plaintiff's side of the story.

(j) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

(k) The circumstances of the communication, including the timing.

97. The Defendant pleaded that the Facebook posts were in the public Interest and that he had a moral duty to safeguard public funds being misused by posting the information received from confidential sources in a public forum. He also pleaded that the issues were raised due to the Claimant's position as CEO of the NCRHA which is a public body and as such the issues of concern needed to be raised in a public forum.

98. I will now examine each of the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020 in the context of **Reynolds** privilege.

WHETHER THE SUBJECT MATTER OF THE PUBLICATIONS WERE OF SUFFICIENT PUBLIC INTEREST

99. The post made on 25 March 2020 was in the public interest. In my opinion, the public was entitled to know if an unqualified person was deliberately appointed to a certain position in the NCRHA in order to facilitate kickbacks to the Claimant as well as the demotion, blacklisting and bypassing of staff and other matters concerning financial impropriety at the NCRHA.

100. With respect to the post on 30 March 2020, the matters raised were also in the public interest as they concerned allegations of the breaching of the NCRHA's HR policy and guidelines, and the misappropriation of funds.

101. My position is similar with respect to the post dated 5 April 2020 as it was in the public's interest to know if funds from the NCRHA were being mismanaged and that included any expenses which may have been incurred in repairing the Claimant's motor vehicle as a result of any accidents.

102. The post dated 14 May 2020 concerned the management of the funds of the NCRHA by the Claimant. It was in the public's interest to be informed if the Claimant was mismanaging public funds and personally benefitting from it.

103. Similarly, the post dated 19 May 2020 which raised matters about the disbursement of funds by the NCRHA to its suppliers. It was in the public's interest to be informed if suppliers were owed money by the NCRHA and the reasons they were not paid as it is related to the mismanagement of funds in the NCRHA.

104. The posts dated 8 and 9 June 2020 concerned the process used to procure the rental of tents and the costs for the said rental. In my opinion, these matters were in the public interest as they concerned transparency in the procurement process to ensure that there were no favoured persons and the use of public funds to pay the provider.

WHETHER IT WAS REASONABLE TO INCLUDE THE WORDS COMPLAINED OF

105. There were several words which were included in each post which in my opinion were not reasonable to include. In the post dated 25 March 2020 the words which were not reasonable to include were "is the CEO running Mt hope as a feeding ground for his boys and girls", "incompetent and shallow minded CEO", "Word on the ground is that this CEO is aspiring to be an MR and next minister of health" and "IS this what the PNM party really stand for?". In my opinion, those words were a personal attack on the Claimant and were unnecessary for the questions posed in that post to the Minister of Health and the Board of the NCRHA.

106. In the post dated 30 March 2020, the Defendant included the words "the self centered CEO for NCRHA" which was in my opinion a personal attack on the Claimant and was not reasonable to include.

107. In the post dated 5 April 2020 given that the nature of the post concerned the use of the funds of the NCRHA for vehicles, it was unreasonable to include a personal attack and an accusation about the Claimant being in accidents while driving under the influence of alcohol while using the vehicles of the NCRHA.

108. With respect to the post dated 14 May 2020, given the nature of the questions raised in this post, it was unreasonable to use the words "FAILING CEO OF MT HOPE" and "THEN WHY WASTE AND SPEND MONEY ON THIS NONSENSE DAVLIN", as those words amounted to a conclusion and a personal attack on the Claimant.

109. Similarly, in the post dated 19 May 2020 the use of the words "FAILING, SELF CENTERED, CLUELESS WABT TI CREATICE (Sic) Director Davlin" were unreasonable as it was a personal attack on the Claimant.

110. In the post dated 8 June 2020 it was unreasonable to use the words "FAILING DAVLIN" as this was a personal attack on the Claimant. Similarly, in the post dated 9 June 2020 it was also unreasonable to use the words "FAILING CEO DAVLIN YOU FEEL CITIZENS STUPID" and the words "You are a fraud a liar a conman and someone who forces contractors and suppliers to give you a kick back before they are paided (Sic)" as these were all personal attacks. The words "You continue more to come on you SOON" were also unreasonable as they were a threat to the Claimant.

SOURCE OF INFORMATION; VERIFICATION; STATUS OF INFORMATION; COMMENT FROM CLAIMANT; GIST OF THE CLAIMANT'S SIDE OF STORY; URGENCY; TONE; AND CIRCUMSTANCES OF THE PUBLICATIONS.

111. In the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020 there was no source of the information stated therein and there was no evidence that the information set out therein was verified. In cross examination, the Defendant admitted that he did not produce any evidence of the source of the information, there was no comment from the Claimant and nothing was stated in the posts that any effort had been made to obtain a comment from the Claimant, as such there is nothing about the Claimant's side of the story in these posts. The tone in all these posts were insincere, pessimistic, sensational and scandalous. There was some urgency in which the matters were raised as the circumstances of these posts were in the early stages of the Covid 19 pandemic and the NCRHA was primarily responsible for the State's health care services to deal with the pandemic. They were also made in the period approximately 4 months prior to a general election in Trinidad and Tobago. The Claimant's evidence was that for the period July 1998 until 2009 he was a former Local Government

Councilor and the Defendant stated at paragraph 17 of his witness statement that he knew that the Claimant is a political person. While the Claimant was not a candidate in the said election, in the highly charged political climate of Trinidad and Tobago, the nature of these allegations were such that if they were proven to be true, they would have had an impact on the public perception of the ruling political party's activities.

112. Although the subject matter in the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020 concerned matters with sufficient public interest there were several words which were not reasonable to include. Further those posts did not meet the standards of responsible journalism. In those circumstances, I have concluded that the Defendant has failed to make out his defence of qualified privilege as he has failed to satisfy all three conditions to successfully rely on that defence. The Defendant is therefore liable to the Claimant in damages for the defamatory statements dated 25 March 2020, 30 March 2020, 5 April 2020,14 May 2020,19 May 2020, 8 June 2020 and 9 June 2020.

WHETHER THE CLAIMANT IS ENTITLED TO AN AWARD OF DAMAGES

113. It was submitted on behalf of the Claimant that he should be awarded damages in the sum of $1,200,000.00 inclusive of aggravated and exemplary damages, as there was a continuous and reckless assault on the Claimant's character during the two and a half months of the Facebook posts. Counsel also submitted that the Claimant's reputation was damaged due to the reckless actions and unremorseful attitude of the Defendant. In support of the sum claimed as damages the Claimant relied on the cases of **Andrew Gabriel v Phillip Edward Alexander[39]; Faaiq Mohammed v Jack**

[39] CV2017-00507

Warner[40]; Alfred I. Pierre v Francis Morean[41] ; Anand Ramlogan v Jack Austin Warner[42]; and **Ricardo Welch v Juliet Davy et al[43].**

114. On the other hand, Counsel for the Defendant argued that if the Court is minded to award damages for the Facebook post dated 8 June 2020, the appropriate range of damages is between $50,000.00 and $200,000.00. Counsel submitted that the Claimant has not suffered any loss of salary, loss of other income such as consulting work or damage to reputation. Counsel also submitted that the Claimant has not proven substantial publication, as the only post with over 249 shares was that dated 8 June 2020 and the Claimant is not of the same political prominence as other politicians in comparable cases. The Defendant relied on the cases of **Gita Sakal v Michael Carballo**[44] and **Carl Tang v Modeste[45]**.

115. **Gatley on Libel and Slander 12th Edition paragraph 9.4** states that:

> "In case of libel and slander actionable per se the law therefor presumes damage arising from the publication and the claimant is entitled to look to an award of damages sufficient to vindicate his reputation according to the seriousness of the defamation, the range of its publication and the extent to which the defendant persisted with the charge."

116. Therefore, once a person is libelled, without any lawful justification or excuse, it will be presumed that he suffered injury to his reputation and his feelings, for which he may recover damages. It follows that there is no explicit requirement for the person libelled to produce any evidence to prove such injury as he starts

[40] Civ Appeal No 252 of 2014
[41] CV 2018-02405
[42] CV 2014-00134
[43] CV 2011-00751
[44] CV2009-02468
[45] HCA No. 3657 of 2010

off with a presumption of damage. However, to attract a substantial award of damages evidence must be provided.

117. The nature and purpose of an award of damages in a defamation action is to compensate for distress and hurt feelings, to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and to serve as an outward and visible sign of vindication[46].

118. In **TnT News Centre Ltd v John Raphael[47]** the Court of Appeal in this jurisdiction adopted the principles of Sir Thomas Bingham in **John v MGN**[48] where he stated that:

> "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. <u>The extent of the publication is also relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people</u>." (Emphasis added)

119. The matters which a Court ought to consider in determining the level of the award according to **Gatley on Libel and Slander[49]** are:

[46] Kangaloo JA in Civ App No 166 of 2006 TnT News Centre Ltd v John Rahael
[47] Civ Appeal No 166 of 2006
[48] [1997] QB 586
[49] 12th ed at page 335

"the conduct of the claimant, his credibility, his position and standing, and the subjective impact that the libel has on him, the nature of the libel, its gravity and the mode and extent of its publication, the absence or refusal of any retraction or apology and the conduct of the defendant from the time the libel was published down to the verdict… the conduct of the claimant in the course of litigation."

120. In assessing the award of damages which the Claimant is entitled to, I will examine the evidence under the following factors:

(a) The mode and extent of the publications;
(b) The gravity of the allegations;
(c) The Claimant's position and standing and the impact upon his feelings, reputation and career;
(d) The conduct of the Defendant from the time of the libel was published to judgment; and
(e) The conduct of the Claimant in the course of the litigation.

THE MODE AND EXTENT OF THE PUBLICATIONS

121. Although a successful claim for defamation requires publication be to just one person, the greater the circulation of publication, the greater the harm to the Claimant's reputation. The mode of the publication was on the social media platform Facebook, which is accessible by several Facebook users.

122. With respect to the extent of the publication, I have already found that based on the totality of the evidence the Facebook posts were read at a minimum 249 times.

THE GRAVITY OF THE ALLEGATIONS

123. In **John v MGN**[50] the Court took the position that in assessing the appropriate damages for injury to reputation, the most important factor to be considered is the gravity of the libel. The more closely it touches the Claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.

124. The nature of the allegations made against the Claimant in the Facebook posts were that he is corrupt, engaged in fraudulent activities in the NCRHA, engaged in nepotism, is incompetent as the CEO of the NCRHA, mismanaged and misappropriated the funds of the NCRHA for his personal benefit and engaged in favouring certain suppliers of the NCRHA based on political affiliation. In my opinion all these allegations were extremely serious and a personal attack on the Claimant's personal integrity, professional reputation and honour.

THE CLAIMANT'S POSITION AND STANDING AND THE IMPACT UPON HIS FEELINGS, REPUTATION AND CAREER

125. In **TnT News Centre** Kangaloo JA pointed to the need for evidence to portray the full extent of the Claimant's hurt, humiliation and distress.

126. The Claimant set out the details of his career in paragraphs 2 to 5 of his witness statement. In essence the Claimant has been the CEO of the NCRHA since 2016 and since 2014 he was also involved in the management of the Hospital at Caura and Mt Hope Women's Hospital. He also stated that he was a former local government councillor for the period July 1998 to 2009 in Barataria and he has roles as Artistic Director, Producer and Stage Manager of large scale theatrical productions within Trinidad and Tobago including Leeds (UK) and Amsterdam.

[50] [1997] Q.B. 586.

127. The Claimant also stated in his witness statement that after the publication of the Facebook posts he has suffered much shame and embarrassment due to the allegations, which are false, disparaging, defamatory and malicious in its intent and geared towards maliciously misinforming the readership to tarnish him, his political career and personal life. He stated that his family including his wife and children have also been severely affected by the allegations which left them traumatized by the persistent and relentless attacks by the Defendant on him and that the Defendant's actions have exposed him to public ridicule and contempt.

128. However, the Claimant did not set out in his witness statement any instance of the distress, hurt or humiliation which the publications caused and there was no evidence that the Claimant lost friends and acquaintances as a result of the publications.

129. In cross examination the Claimant admitted that he has not suffered any loss of income in terms of his salary or any position at the NCRHA. He testified that his private engagements have suffered but he did not provide any details of this aspect of his loss.

130. Further, I accept that due to the serious nature of the allegations made about him in the defamatory publications the Claimant was deeply hurt and that his family would have also been very hurt. In my opinion based on the Claimant's evidence he has not been adversely affected at work due to the defamatory publications as they did not cause him to lose friends and acquaintances or lose his job as CEO of NCRHA and in the absence of any cogent evidence he also did not suffer any loss of private engagements.

THE CONDUCT OF THE DEFENDANT FROM THE TIME THE LIBEL WAS PUBLISHED TO JUDGMENT

131. The Claimant stated in his witness statement that he caused his Attorney-at-Law to issue a Pre-Action Protocol letter dated 9 June 2020 to the Defendant calling upon him to answer his concerns, to publish an apology and a public retraction and to have all the Facebook posts removed with immediate effect.

132. According to the Claimant, on 10 June 2020 the Defendant responded to the Pre-Action Protocol Letter by way of email (nareshsiewah@gmail.com) to Mrs. Jennifer Farah-Tull, Attorney-at-Law of Hove & Associates where he acknowledged receipt of said letter, vehemently apologised several times, noted his removal of the complained posts from his personal Facebook profile, accepted his mistake of posting the above allegations and assured that there will not be a repeat of such actions. The Claimant attached a copy of the email sent by the Defendant as "D.T.7".

133. The Claimant also stated that on 15 June 2020, the Defendant once again sent an email addressed to his Attorneys-at-Law with an attached letter and supporting documents where he claimed that the postings made by him were the result of his Facebook profile being hacked and compromised by someone with the Facebook profile entitled "JOHNNY WALKER", also called "John Narine". The Defendant alleged that the posts complained of were all posted by the said "Johnny Walker" for a period subsisting beyond two months and that they were done at a time when he was not in use of his profile. He went on to admit guilt over the posting of the salaries of the Claimant and CFO of the NCRHA as well as the information pertaining to an IDB Loan. The Defendant ended the said email indicating his readiness to apologise only for the postings made by himself and not the ones purportedly made by the said "Johnny Walker" and his eagerness to have this matter resolved immediately. The Claimant attached a copy of the email sent by the Defendant as "D.T.8".

134. The Claimant further stated in his witness statement that the defamatory posts complained of were published throughout the period 25 March 2020 until 9 June 2020 which was 76 days or approximately two and a half (2.5) months. He explained that the Defendant's admissions with respect to the publication of loan and salary information occurred on 21 May 2020 and 4 June 2020 respectively. As such these postings were made within the highlighted period and would have been within the purview of the Defendant at a time when he was using his Facebook profile.

135. The Claimant then contended that the Defendant's claim that he was not in use of his Facebook profile at the time and that it was hacked was completely false, as he would have received several notifications that other users were sharing and commenting on posts coming from his Profile and therefore if the Facebook profile was indeed hacked as he claimed he would have realised by these notifications. Furthermore, the manner, tone and content of these posts were made in nearly identical fashion to those purported to be made by Mr "Johnny Walker".

136. The Defendant stated in his witness statement that on 15 June 2020 he responded to Ms Farah-Tull to apologize but he did so without the benefit of legal advice. He also stated that he was only given three days to respond to Ms Farah-Tull and that he has since been advised by Counsel that this was contrary to the Pre-Action Protocol on defamation.

137. This aspect of his evidence was consistent with his pleaded case. However, there was no evidence by the Defendant to support his defence that the Facebook posts were authored by a "JOHNNY WALKER" who compromised and had access to the Defendant's Facebook Account at the time. This evidence was not challenged in cross examination.

138. In my opinion, this defence appeared to be a fabrication by the Defendant as he had admitted in cross examination that he had authored the posts dated 25 March 2020, 30 March 2020, 5 April 2020,14 May 2020,19 May 2020, 8 June 2020 and 9 June 2020.

Therefore, the Defendant knew from his initial response that he was the author of the Facebook posts. However, he was not forthright with the Claimant. The Defendant's conduct from the time the libel was published until judgment was not consistent as at first he admitted responsibility then he sought to deny liability by casting blame on a third party.

THE CONDUCT OF THE CLAIMANT IN THE COURSE OF THE LITIGATION

139. The Claimant's evidence was that after the Defendant changed his position and indicated that he was not the author of the Facebook posts, he instructed his Attorneys-at-Law to file an application to for an order to have the said posts removed and to prevent the Defendant from making any further defamatory statements and on 29 July 2020 the Court made an order preventing the Defendant from publishing any further defamatory statements of me. This was consistent with his pleaded case. In my opinion, having received an inconsistent response from the Defendant, the Claimant cannot be faulted for approaching the Court for interim relief.

QUANTUM

140. It is settled law that awards of general damages for defamation must be considered in light of prior comparable awards. This allows for the fulfilment of the desirable policy of a measure of certainty and consistency in awards for damages, accepting that every case is unique and that comparable awards are never finally determinative. This is especially so in relation to the tort of defamation, in which injury to reputation is so idiosyncratic, that comparable cases are always only guides. Thus, unless there is a sufficient pool of comparable cases, there may be little real value in the exercise[51].

[51] See paragraph 19 of Faaiq Mohammed

141. Having assessed the evidence, I also considered the sums awarded in the following cases to arrive at an appropriate range for the damages to be awarded to the Claimant. I considered the authorities referred to me by the respective Counsel for the Claimant and the Defendant.

142. In **Gita Sakal v Michael Carballo**, Boodoosingh J (as he then was) awarded the Claimant the sum of $50,000.00 as general damages on 26 November 2012. Gita Sakal was an Attorney-at-Law and General Counsel/Corporate Secretary of a private financial institution (CL Financial/CLICO), that was in financial crisis at the time and the subject of inquiry. The defamatory allegation was contained in an article published once in a Sunday newspaper. The offensive parts accused her of forgery and fraud in relation to an alleged letter authorising the payment of US $5,000,000.00 to her. The trial judge had regard to Ms Sakal's own conduct in relation to the offending allegation but he was of the view that the Claimant was not of the prominence of other public figures to attract a higher award.

143. On 13 March 2013, Master Alexander awarded the Claimant, a teacher in **Carl Tang v Charlene Modeste** [52] the sum of $18,000.00 for words published in a letter with limited publication. The Court considered that the libel was not broad-based in terms of the general population but was contained mainly within his professional circle at the school where he was employed.

144. In **Anand Ramlogan v Jack Austin Warner**, the Claimant was the then Attorney General of Trinidad and Tobago who brought a defamatory action for words complained of. The defamatory statements were publicly made by the Defendant and was later broadcasted in the media. On 30 July 2015, the Court awarded the sum $600,000.00 inclusive of aggravated damages and an award of exemplary damages in the sum of $200,000.00.

145. In **Ricardo Welch v Juliet Davy et al** the Court awarded the Claimant the sum of

[52] CV2010-03657

$700,000.00 on 25 April 2017 for defamatory statements made against him during a radio broadcast. Two years after on 1 May 2019, Gobin J in **Andrew Gabriel v Phillip Edward Alexander** awarded that Claimant the sum of $525,000.00 as general damages and the sum of $250,000.00 as aggravated damages for the publication of two statements made by the Defendant on the social media site Facebook which the Court found to be defamatory of the Claimant. The extent of the publication was not in issue as the Defendant admitted that after he posted the defamatory statement he gained at least half of a million new followers.

146. Later on, 22 May 2019, the Court of Appeal in **Faaiq Mohammed v Jack Warner** set aside the damages awarded by the trial judge and instead awarded a higher sum of $500,000.00 as general damages and $150,000.00 as exemplary damages on the basis that the matter concerned an intentional, willful and relentless defamation of the Appellant by the Respondent over a period of seven days.

147. In **Alfred I Pierre v Francis Morean** the Claimant, a senior Attorney at law with 38 years practice was awarded the sum of $900,000.00 inclusive of aggravated damages for defamation on 21 October 2019 . This case concerned defamatory statements made by the Defendant on a Facebook post about the Claimant. In this case the statements were published and livestreamed.

148. In determining a reasonable range for the general damages in this action I have taken into account that the Claimant in the instant case had a more prominent public figure than the Claimant in **Gita Sakal** and **Carl Tang**. However, the Claimant's public profile was not as prominent as the Claimant in the **Anand Ramlogan** case. In my opinion, the Claimant's public profile was more akin to that in the **Faaiq Mohammed** and **Alfred Pierre** cases.

149. With respect to the extent of the publication I was of the view that the extent of the publication in the instant case was greater than that in **Gita Sakal** and **Carl Tang.** However, it was not as widespread as in **Ricardo Welch** which concerned

a radio broadcast or **Andrew Gabriel** which concerned defamatory statements posted on Facebook as in that case the defamatory statements were read by at least half of a million persons as this was the amount of new followers which joined after the said posts and in **Alfred Pierre** the statements were posted and there was a live stream on Facebook. In the instant case, while there was evidence of publication, there was no evidence to make a finding that thousands of persons read the defamatory posts. For this reason the measure of damages cannot be in the same range as that in **Andrew Gabriel**.

150. I also took into account that I granted interim relief on 29 July 2020 which limited the extent of the publication of the posts for which the Defendant is now liable for.

151. However, I have attached significant weight to the gravity of the allegations made in the defamatory posts. In my opinion, the Defendant could have raised the questions to the Minister of Health, the Board of the NCRHA and the Claimant as CEO of the NCRHA in a more sincere tone and with respectful language. However, the choice of the words used by the Defendant in the defamatory posts were deliberate, malicious and intended to injure the Claimant as CEO of the NCRHA, and in his other professional and personal activities.

152. I have also taken into account that these personal attacks were continuous during the period 25 March 2020 to 9 June 2020. For these reasons, I am of the view that the appropriate range of damages for the posts dated 25 March 2020, 30 March 2020, 5 April 2020, 14 May 2020, 19 May 2020, 8 June 2020 and 9 June 2020 is between $700,000.00 and $1,000,000.00. In my opinion, an appropriate award of damages to compensate the Claimant for his loss is $800,000.00. This sum includes an award for aggravated damages as the Defendant's conduct in publishing the defamatory posts was reckless and without regard to the accuracy of the truth of the contents. The Defendant did not seek clarification from the

Claimant, the Minister or the Board of the NCRHA about the truth of the allegations before he published the defamatory posts and he failed to adduce any evidence to corroborate his allegations. In my opinion, the Defendant was fully aware that his actions were intended to harm and discredit the Claimant personally and professionally, as at first he issued an apology in response to the Claimant's Pre-Action Protocol letter but retracted it shortly thereafter, only to accept responsibility for the defamatory posts during cross examination.

153. I now turn to the claim for exemplary damages. In Trinidad and Tobago exemplary damages can be awarded for the commission of a tort including defamation cases.[53] One purpose that exemplary damages serves is that of punishing a tortfeasor for unacceptable and unlawful egregious conduct. Another is as a deterrent against any future similar conduct (whether by that tortfeasor or anyone else). It is a policy intervention, in the form of an award of damages, to make a public statement that certain kinds of offensive conduct are punishable because of the sense of public outrage that the conduct evokes in the minds of reasonable and law abiding persons. It is a statement that these kinds of conduct are inimical to the common good in a democratic society. Once this is made clear, the concern about its 'chilling' effect on free speech, which is vital in a democratic society, will not arise[54].

154. The well-known considerations that a Court should also bear in mind in determining whether to award exemplary damages for defamation are : (a) it is an exceptional order, as it serves to punish and deter, and the primary objective of damages in civil suits is compensatory; (b) cases where there is a lack of intentional wrongdoing or an absence of reckless disregard for harm, will be rare and exceptional; or (c) exemplary damages should only be awarded when the award for compensation in and of itself, will not serve to effectively punish or deter the tortfeasor. Outrageous conduct, intentional oppression; seeking to gain 'advantage'; and recklessness as to

[53] Jamadar JA (as he then was) in **Faaiq Mohammed**
[54] See paragraph 101 in **Faaiq Mohammed**

truth and/or harm, have also been emerging reasons justifying an award of exemplary damages in defamation.

155. I have decided to award the sum of $100,000.00 as exemplary damages as this was a case that satisfies all of these elements. In my opinion the conduct of the Defendant was wilful, intentional and reckless. It was outrageous by any standards and cannot be condoned by this Court. It was oppressive and it was intended to 'advantage' the Claimant given the very serious personal attacks on him and the sensational tone of the defamatory posts. In my opinion the award for compensation, which includes an uplift for aggravated damages, does not effectively punish the Defendant for his egregious acts and more is required in the circumstances of this case to both punish and deter.

ORDER

156. Judgment for the Claimant.

157. The Defendant to pay the Claimant general damages in the sum of $800,000.00 inclusive of aggravated damages together with interest thereon at the rate of 2.5% per annum from 24 June 2020 to the date of judgment.

158. The Defendant to pay the Claimant exemplary damages in the sum of $100,000.00.

159. The Defendant whether by himself, his servants(s), agent(s) is /are restrained from publishing or causing to be published and/or from republishing or causing to be republished any words, statements and/or innuendos defamatory of the Claimant as complained of in the Pre-Action Protocol Letter dated 9 June 2020 and in particular the posts posted by the Defendant on his Facebook profile at www.facebook.com/naresh.n.siewah/.

160. The Defendant is directed to issue an apology and public retraction in writing to the Claimant of the allegations made in the posts authored by him and published on his Facebook profile and other third party Facebook profiles during the period of 24 March 2020 to 9 June 2020. The public statement should take the same form of the original defamatory publication, being an equally highlighted post published on his Facebook profile and the other Facebook profiles that the Defendant shared the posts on.

161. The Defendant to pay the Claimant prescribed costs in the sum of $101,500.00.

/s/ Margaret Y Mohammed

Judge