IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

2017-HC-DEM-CIV-SOC-254

BETWEEN:

YOKOHAMA TRADING GUYANA INC., a limited liability company duly incorporated in Guyana under the Laws of Guyana, with its registered office situated at 72 Barrack Street, Kingston, Georgetown, Guyana.

Claimant

- and-

1. **GUYANA NATIONAL NEWSPAPERS LIMITED,** a company duly incorporated under the Companies Act 1991 of the Laws of Guyana with its registered office located and situated at Lama Avenue, Georgetown

2. **EDITOR OF THE GUYANA CHRONICLE**

Defendants

Jointly and Severally

Mr. Mohabir Anil Nandlall and Mr. Rajendra R. Jaigobin, Attorneys-at-Law for the Claimant.

Ms. Sharon Small and Ms. Faye Barker-Meredith, Attorneys-at-Law for the Defendants.

JUDGMENT OF THE COURT

" Good name in man and woman, dear my Lord, Is the immediate jewels of their souls : Who steals my purse steals trash, 'tis something, nothing, / 'Twas mine , 'tis his , and has

been slave to thousands; / But he that filches from me my good name / Robs me of that which not enriches him, /And makes me poor indeed,"

William Shakespeare, Othello, act 111, scene iii, 11 155 – 61: cited by Robert C Post , The Social Foundations of Defamation Law: Reputation and the Constitution, 74 Calif. L, lRev.691 at 692 (1986).

1. The claimants complain that the defendants have maliciously defamed them by the publication of grave falsehoods with equally untrue imputations printed in two articles published on the 15th of August 2017 with banner headlines in the Guyana Chronicle and maliciously repeated with equal prominence in the issue of the 17th of August 2017, that their respective businesses and companies were part of a criminal enterprise engaged in the laundering of money received from the proceeds of crime including narcotics trafficking and other criminal acts.

   The Claimant in SOC / 252 of 2017, Clifton Bacchus is the owner of several hotels in Guyana under the brand 'Sleepin' and the majority shareholder in Sleepin International Hotel and Casino which owns the new Sleepin International Hotel and Casino.

   The Claimant in SOC / 253 OF 2017 Pasha Global Inc, is a company incorporated under the laws of Guyana and the member of a chain engaged in casino operations in several different countries under the commercial name of Pasha Global.

   The Claimant in SOC / 254 of 2017, Yokohama Trading (Guyana) Inc is a company incorporated under the laws of Guyana, engaged in the importation and sale of used motor vehicles in Guyana

   In three separate legal proceedings filed, each claimant seeks general and exemplary damages for libel against the defendants, as the Publisher and the Editor respectively, of the Guyana Chronicle newspapers. The court elected to hear the three proceedings together as the cause of action of libel upon which each claim is founded, arose from common publications. In addition, the defendants, the pleadings of the parties , the

evidence , the submissions and the issues to be determined in each case are identical, as incidentally were the attorneys on record for the parties.

2. The defendants have admitted the fact of the publication of the two articles in issue but contend that the articles published were not defamatory of the claimants nor do the statements in their natural and ordinary meaning give rise to the imputations of libel set out at paragraph 16 and 15 of the claimant's statements of claim. The defendants in their defence pleaded and initially relied on the defence of justification and fair comment or in the alternative qualified privilege but in their written submissions at pages 12 and 13 rely exclusively on the latter two. The defendants have also highlighted the importance of the preservation and protection of the freedom of expression as one of the cornerstones of every democratic society.

3. There are three elements in a claim for defamation founded on libel which a claimant is required to establish :

   a) The words or statement were defamatory or " convey a defamatory meaning ".
   b) There was publication of the statement by the defendant.
   c) The statement was of and concerning the claimant.'.

   Defamation, Law Procedure and Practice, David Price second Edition,2001 paragraph 1-04, page 4.

   Halsbury's, Laws of England, Fourth Edition, volume 28, paragraph 39, page 20.

The import of establishing these elements must not be confused as conclusive proof of the libel. The author David Price (supra) at page 3 , explained the position at law,

> In order to establish a claim in defamation a claimant must prove that the defendant has published or is responsible for the publication of defamatory material which is reasonably understood to refer to the claimant ..... It then falls to the defendant to establish one or more of the recognized

defences ..... ". In legal terminology a defamatory statement only becomes libelous or slanderous when the defendant has failed to establish a defence."

This is consistent with the position that a defamatory statement is presumed to be false and there is no requirement in law on the claimant to prove the falsity. The burden of establishing the truth of the defamatory statement is exclusively on the defendant and a defendant who discharges this burden has an absolute defence. This is referred to as the defence of truth or justification.

The issues to be determined by this court arising from these claims are :

a) Whether the articles published on the 15th and 17th of August were defamatory or conveyed a defamatory meaning.
b) Whether the articles were published of and concerning the claimants.
c) Whether any defence avails itself to the defendants in the present matters if the first two issues are in the affirmative.

I propose to deal with each issue in turn.

4. **Issue: Whether the articles published on the 15th and 17th of August were defamatory or conveyed a defamatory meaning.**

The two articles are part of the pleadings and body of evidence before the court and no part of its content, banner headlines, prominence, captions, photographs and accompanying statements are in issue.

The claimants contend that that untrue imputations arise from the natural and ordinary meaning of the articles as a whole and have not identified any specific statement therein. The court will refer to specific portions in this judgement but it does not mean the portions not expressly referred to are considered to be any less important.

The first article was printed and published by the defendants and carried in banner headlines on the front page of the Guyana Chronicle newspapers and continued on page 3.

The headlines bore the caption " Tracking the money .....Sleepin boss, associates snared in money laundering probe .....SOCU tells Gaming Authority investigation on since 2016". The bold caption was reprinted on page 3 with equal prominence and accompanied by a large photograph of the claimant Clifton Bacchus , with the words " Owner of the Sleepin International Hotel and Casino Inc. Clifton Bacchus ."

In the lead paragraph of the article , which extended across the greater part of page 3, the defendants published the following statement:

" The Gaming Authority could likely reject altogether an application for the Sleepin Hotel to operate a Casino here with the Special Organised Crime Unit (SOCU) disclosing that the owner Clifton Baccchus and several of his associates are under investigation for money laundering since last year ."

" SOCU did not disclose the names of the associates ."

" Earlier this year the authority had rejected the Sleepin's casino licence application on the basis there was no evidence that the business place was financially sound "

" The Authority wishes to state that having received and thoroughly considered the application , it unanimously found no evidence upon which it could arrive at a determination that Sleepin International Hotel and Casino Inc qualifies for the issuance of the licence applied for having regard to its failure to provide the Authority with documents evidencing its financial soundness....."

Later in the article under the sub-caption " Deep Probe ," the defendants further published:

" according to documents seen by this newspaper the Roysdale Forde led Gaming Authority on July 10th 2017 wrote head of SOCU requesting information regarding Bacchus.....Forde said the Gaming Authority was currently reviewing and considering an application for Casino licence

submitted by Bacchus of Sleepin International Hotel and Casino Inc."

" I would be grateful if you can share any information in relation to the aforesaid applicant that you may have in your presence as soon as possible , " Forde's letter stated.

And later:

" In a very timely response dated the dated July 11th 2017 , James responded to Forde's letter stating " Kindly be informed that Mr Clifton Bacchus, the Sleepin International Hotel and Casino Inc and a number of associates of Mr Clifton Bacchus are subjects of a money laundering investigation being conducted by SOCU since July 2016, " James said, adding that "financial and other assets information have been sourced through court orders and other requests for pertinent information from statutory agencies."

And later:

" It is unclear what Forde's response was to SOCU but top officials said that the money laundering probe is likely to deepen shortly "

And later under the sub caption " denial ":

Under this caption the defendants printed and published a purported interview given by the claimant Clifton Bacchus to another media house earlier in the year.

" A Demerara Waves article earlier this year had quoted Bacchus as denying that any politician had any stake in his U.S $ 20 million dollar hospitality and gaming facility....."

" ..... Following the rejection of his initial application for Casino licence, Bacchus had said he was putting together all of the required paperwork before re-applying. Bacchus has already, set up his gaming machines and tables and has hired and trained staff. Bacchus also told Demerara Waves that his investment was being funded by financial institutions , his personal funds, and Pasha Global Group a Suriname – headquartered company that will be operating the carnival Casino ....."

The evidence before the court disclosed that the Gaming Authority had been scheduled to conduct an inspection of the Sleepin International Hotel and Carnival Casino premises on the 16th of August 2017, the day immediately after the first publication.

On the 17th of August 2017 the defendants printed and published a second article on the front page of the Guyana Chronicle with banner headlines and continued on pages 2 and 8, bearing the caption:

" The Dutch connection.....Sleepin Casino Surinamese partner was jailed for money laundering.....Bacchus quizzed about permission to import slot machines."

On page 2 of the newspaper the defendants published a number of statements of and concerning the claimants , repeating the earlier statements published on the 15th, and publishing accompanying photographs of the claimant Clifton Bacchus and the Sleepin Hotel and Carnival Casino.

The defendants published the following statements as part of this article:

" the owner of Yokohama Trading Company , the parent company of Pasha Global Group, Bhagwandath " bidjay ," Parmessar one of the main players in the setup of the Clifton Bacchus and Carnival Casinowas on December 23 2006 jailed for 10 years by a Judge in the Netherlands for drug trafficking, money laundering and fraud. "

And later:

" Pasha Global Group is a subsidiary of Yokohama which imports vehicles and operates in Suriname and Guyana. "

" Pasha Group operates casinos in Suriname , Uganda, Bulgaria, and Peru, according to a Demerara Waves articles earlier this year Bacchus had admitted that his investment is

being funded by financial institutions, his personal funds, and Pasha Global Group a Surinamese Headquartered company that will be operating the Carnival Casino. "

" However the Pasha Global Group owner who was described by Surinamese and Dutch Judicial authorities as the biggest drug lord in Suriname was arrested in Suriname in 2005..... extradited to the Netherlands for prosecution. In 2006 a court in Rotterdam sentenced him to a 10 year jail term for two cases of drug trafficking in 1995 and 2002. Parmessar was among others charged with allegedly leading a criminal organisation, drug trafficking, money laundering, and forgery. Media reports had said that the former owner of several Casinos , liquor stores, car sales and money transfer offices in Paramaribo was accused of organising large cocaine shipments from Columbia to Suriname....."

" Owners and managers of the so called Yokohama Group of Companies which operates casinos , cambios , money transfer offices, car sales and liquor stores in Suriname were suspected of belonging to a criminal organization one report stated ."

Under the sub caption " U.S Cable," the defendants printed and further published:
" Meanwhile in a January 13th 2006 cable from the U.S embassy in Suriname which was leaked through Wikileaks Washington described Parmessar as a well known and influential businessman in Suriname. The cable also named Parmessar as the Chief operator and owner of Yokohama Trading Company which Surinamese and Dutch Judicial authorities had long suspected as being a front for a criminal organization. "

" The Dutch Judiciary found that the head of Yokohama was involved in trafficking large amounts of cocaine from Suriname to the Netherland sand other European countries and laundering the proceeds through his Companies many Casinos , car dealerships, foreign exchange offices and money transfer offices in both countries. "

" The cable read that despite Parmessar's arrest and conviction Yokohama business entities such as its car dealerships and casinos , continue to operate ."

The defendants thereafter repeat, print and publish the central portions of the first article under the sub captions " SOCU Probe ," and " Deep Probe ,"

" Last month the SOCU disclosed to the Gaming Authority that Bacchus and several of his associates are under investigation for money laundering since July last year .SOCU did not disclose the names of the associates. "

5. The claimants all contend that the words and statements in the two articles , in their natural and ordinary meaning were meant and understood to mean :
   a) That the claimants are engaged in money laundering , drug smuggling, forgery and other criminal activities.
   b) That the claimants are connected to and associated with persons engaged with money laundering , drug smuggling , forgery and other criminal activities .
   c) That the claimants are part of an international criminal enterprise of money laundering, drug smuggling , forgery and other criminal activities.
   d) That the claimant's business including his international hotels and intended casino are funded and financed by money launders, drug traffickers, forgers and other criminals.
   e) That the claimant is a criminal engaged in numerous criminal activities.
   f) That the claimant's business including his international hotels and intended casinos are all part of an international criminal enterprise.

6. The test as to whether the words, statements and or article is defamatory is set out in Halsbury's Laws of England , Volume 28, Fourth Edition at para.22 and embodies two principles :

a) "The court must first consider what meaning the words convey to the ordinary man," that is their natural and ordinary meaning.

b) " having determined the meaning , the test is whether , under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory sense."

David Price (supra) at para 2-01, page 5 approached the issue in this way:

" In order to determine whether or not the statement or publication which is the subject of a defamation claim is defamatory it is generally necessary to ask two questions ,

a) What is the meaning or meanings it would convey to an ordinary and reasonable person ?

b) Is that meaning or are those meanings defamatory ? "

In Ramsahoye v Peter Taylor and Company Ltd (1964) LRBG page 329 at 331 Bollers J. cited with approval the dictum of Camacho CJ in Woolford v O.W.Bishop (1940) LRBG 93 at page 95:

> " ..... the single duty which devolves on this court in its dual role is to determine whether the words are capable of a defamatory meaning and given such capability whether the words are in fact libelous of the plaintiff. If the court decides the first question in favor of the plaintiff the court must then determine whether an ordinary intelligent and unbiased person reading the words would understand them as terms of disparagement and an allegation of dishonest and dishonourable conduct . The court will not be astute to find subtle interpretations for plain words of obvious and invidious import. "

Further at page 332:

> " and in the case of Lewis v The Daily Telegraph Ltd [1963] 2 W.L.R 1063 Lord Reid makes it clear that it is the duty of the Judge to examine both the publication and the innuendo placed upon it and to rule whether the words appearing therein are capable of bearing a

defamatory meaning more particularly the meaning attributed to them in the innuendo and the test is the same in both instances....."

And further at page 333:

" I must therefore rule both on the question of whether the words in the publication in the ordinary and natural meaning are reasonably capable of bearing a defamatory meaning and more particularly whether they are capable of bearing the defamatory meanings as attributed to them by the plaintiff in the innuendo."

7. David Price (supra) at para 2-06 makes reference to several principles of construction which have emerged from leading cases in determining " how the ordinary reader interprets the words," :

1. " The natural and ordinary meaning is that which the words convey to the ordinary reasonable persons."

2. "The ordinary reader is not avid for scandal but can read between the lines and draw inferences.....One must try to envisage people between these two extremes (unduly suspicious and unusually naïve) and determine the most damaging meaning they would put on the words....."

3. " The effect of the publication on an ordinary reader is one of impression and the court should be wary of an over–elaborate analysis. The narrow and analytical construction put on words by a lawyer is inappropriate...."

4. ".....the meaning the defendant intended to convey is irrelevant for this purpose. The court is concerned solely with the objective test of how the words would be understood ...."

5. " Equally the way in which the words were understood is irrelevant .No words can therefore be adduced of how the words were understood in relation to their meaning ...."

6. " The ordinary reader takes notice of the circumstances and manner of the publication, such as the prominence given to the allegations. Where a particular matter is given prominence in a newspaper it may be assumed that it is one of significance and is therefore more likely to convey a defamatory meaning to the reader."

7. " The entire publication must be considered- bane and antidote.....The ordinary reader is treated as having read the publication as a whole in determining its meaning.... The claimant must take the good with the bad."

8. " Where the Defendant is repeating what someone else has told him he is generally to be treated as having said it himself. Great care should be taken before a person gives further coverage to defamatory allegations....."

9. " The single meaning rule ...It is often said there can only be one natural and ordinary meaning and one innuendo meaning . .....The effect of the single meaning rule is that where there are legitimate but contradictory interpretations of the words .....the court must determine one "correct " meaning out of the conflicting interpretations. "

In the case of Jwala Rambarran and Dr. Lester Henry, (unreported) Claim No. CV2014- 03990 , a decision of the High Court of Trinidad and Tobago , Justice Rampersaud at page 5 of his judgement on this issue of whether the words are defamatory cited with approval the Judgement of Justice of Appeal Mendonca, in Kayam Mohamed and others v TPCL and others, Civil Appeal No. 118 of 2008 " where he had reiterated the established learning as to the factors to be considered by a court in determining whether the words are defamatory ".

" There was no dispute as to the proper approach of the Court in determining the meaning of words alleged to be defamatory. The principles were recounted by Lord Nicholls in Bonnick v Morris[2003] 1 A.C 300 at para 9 :

> " Before their Lordships Board the issues were reduced to two, meanings and qualified privilege. As to meaning the approach to be adopted by a court is not in doubt. The principles were conveniently summarized by Sir Thomas Bingham M.R in Skuse v Granada Television Ltd[1966] EMLR 278, 285-287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the " Sunday Gleaner" reading the article once. The ordinary reasonable reader is not naïve, he can read between the lines but he is not unduly suspicious. He is not avid for scandal . He would not select one bad meaning where other , non- defamatory meanings are available. The court must read the entire article as a whole and eschew over-elaborate analysis and also too literal an approach. The intention of the publisher is irrelevant. An appellate court should not disturb the trial Judge"s conclusion unless satisfied he

was wrong."

Mendonca JA continued:

" 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] A.C , 234, 258 Lord Reid stated :

" What the ordinary man would infer without special knowledge is generally called the natural and ordinary meaning of 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."

And Lord Morris in Jones v. Skelton[1963] 1 WLR 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 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."

Mendonca JA continued:

" 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.[1952] 2 A.C Lord Bridge, after referring to the fact that the natural and ordinary meaning of words may include any implication or inference stated :

> " 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 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. "

" 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 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 in 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 recognize , 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.

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

Justice Rampersaud at paragraph 6 , page 7 of his judgement further stated :

" The issue was also helpfully summarized by Tugendhat J in Cooper and another v Turrell [2011] EWHC 3269 (QB):

" In deciding at the trial of a libel action the meaning of the publications complained of, the court adopts the same test as it applies in deciding what meaning such words are capable of bearing. That test was most recently set out by Sir Anthony Clarke MR in Jeynes v News Magazines Ltd [2008] EWCA Civ at para 14 as follows :

" The legal principles relevant to meaning .....may be summarized In this way :

1. The governing principle is reasonableness.
2. The hypothetical reader is not naïve 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.
3. Over – elaborate analysis is best avoided.
4. The intention of the publisher is irrelevant.
5. The article must be read as a whole and any " bane and antidote " taken together.
6. The hypothetical reader is taken to be representative of those who would read the publication in question.
7. In delimiting the range of permissible defamatory meanings the court should rule out any meanings which " can only emerge as the produce of some strained , or forced , or utterly unreasonable interpretation...."
8. It follows that " it is not enough to say that by some person or another the words might be understood in a defamatory sense."
9. It is not the function of the court simply to either reject or accept the meaning put forward by the claimant . the court must reach its own conclusion...

.Applying these principles to the two articles published by the defendants, on the 15th of August 2017 captioned " TRACKING THE MONEY.....Sleepin boss, associates snared in money laundering probe ...." and on the 17th of August 2017 captioned " THE DUTCH CONNECTION....Sleepin Casino Surinamese partner was jailed for money laundering ".

In construing whether the two articles had a defamatory meaning I do find and so hold that an ordinary and reasonable person reading the articles would be left with the inescapable and ineluctable conclusion, that the publications could only mean ,as the defendants clearly intended to convey, in its natural and ordinary meaning that :

a. The Claimants were part of a criminal enterprise and conspiracy engaged in laundering money received from the proceeds of different crimes committed in different jurisdictions and the claimants had no independent legitimate sources of income.
b. These crimes included but was not limited to transnational drug trafficking and money laundering.
c. The Sleepin International Hotel and Casino and related entities under the name Sleepin Hotels owned by Clifton Bacchus, were all a part of this criminal enterprise and network that was engaged in money laundering
d. The business operations of all of the claimants, that is the importation and sale of motor vehicles from Japan in Guyana by Yokohama and the worldwide casino operations of Pasha Global were all fronts for the claimants criminal enterprise and part of a cover for participants in the criminal enterprise.
e. All of the aforesaid entities were engaged in money laundering and other criminal activities and were not legitimate businesses.
f. A person closely connected to The Sleepin International Hotel and Casino had actually been jailed for money laundering and drug trafficking.
g. The Sleepin International Hotel and Casino was not financially sound, had no legitimate sources of income , hence the resort of its owner Clifton to money laundering.

h. The Yokohama and Pasha Global claimant companies, were associates of Clifton Bacchus, in a conspiracy to criminally and unlawfully launder money.

i. The SOCU had recently caught Clifton Bacchus of the the Sleepin Hotel and his associates laundering money, as a result of an investigation it had been conducting since 2016.

The second article provided clarity beyond doubt as to who were the associates referred in the first publication but not expressly named. The defendants not being contented with the first publication and reference to unknown personalities published a second article within 48 hours , ensuring that its readers and members of the public were left in no doubt as to the identity of the associates referenced in the first article. At the time of publication of the second article the first had not been withdrawn and remained in circulation, a position that the claimants contend continues to present on the online site of the publication.

The articles are not the type of publications that cause a Court to pause or hesitate in construing whether it has or is capable of a defamatory meaning. The natural and ordinary meaning, purport and intent of the full text of the publications are quite apparent on the face of it and I have no hesitation in concluding that they are defamatory of the claimants in the circumstances and convey the imputations and innuendos set out in the Claimants' statement of claim. On the evidence before this Court I do find that defamatory publications had the effect of damnifying and lowering the first named claimant in the estimation of right thinking members of society, of discrediting the claimants all in the course of their trade and business and tending to destroy and erode the financial credit and standing of the claimants . I do find without hesitation that these articles constitute a libel beyond measure, reckless , baseless and irresponsible, without any regard to the basic tenets and principles of journalistic inquiry , a state of affairs confirmed by the evidence and testimony of the second defendant under cross examination.

The contents of the articles are a matter of grave concern and unease to the Court as it conveyed a reckless indifference and utter contempt for the truth, an abdication of rudimentary journalistic responsibility , and a flood of libel, vilification and humiliation of the claimants.

The publications were afforded special and significant prominence, commencing on the front page , with banner headlines, and continuing on the pages 2 and 3, accompanied again by prominent captions, sub-captions and photographs and a repetition of the defamatory statements published in the first article. A crude attempt and lackluster attitude by the defendants to convey the appearance of balance and fairness, after publication of the defamatory statements was an abysmal failure. The defendants purported to quote from a different media House Demerara Waves, in the latter part of the article, not indorsing or accepting the contents, nor acting upon same, save to further libel and tarnish the party named therein in the second publication.

The words of Lord Bridge on this issue in Charleston v News Group Newspapers Ltd [1995] 2 A.C 65 " may be appropriate in the circumstances:

> " it is often a debatable question..... whether the antidote is effective to neutralize the bane.....and in determining the question the jury may certainly consider the mode of publication and the relative prominence given to different parts of it."

" Where a newspaper publishes a defamatory headline it is, " according to Lord Bridge, " playing with fire" and any curative words in the text must be sufficiently clear and prominent.....it is rare that a publication attacks a claimant without giving some coverage to his side of the story and this of itself will clearly be insufficient to neutralize the attacks ".

Issue: Whether the articles published were of and concerning the claimants.

Bollers J. in Ramsahoye (supra) at page 336 , on this issue stated :

> " It is an essential element of the cause of action for defamation that the words complained of should be published of the plaintiff. No writing is considered to be a libel unless it reflects on and casts an imputation on some particular person."

Halsbury 's Laws of England , Fourth Edition, at paragraph 39 page 20 on this issue provides:

" Where a plaintiff is referred by name or otherwise clearly identified the words are actionable even if they were intended to refer to some other person and both the plaintiff and the other person may have a cause of action. However it is not essential that the plaintiff should be named in the statement . Where the words do not expressly refer to the plaintiff they may be held to refer to him if ordinary sensible readers with knowledge of special facts could and did understand them to refer to him....."

And further at para 40.

" where the identification is in issue it is for the Judge to rule whether or not the words are reasonably capable of being understood to refer to the plaintiff. In determining this question the Judge must consider whether or not ordinary sensible men having the knowledge proved could understand the words to refer to the plaintiff....."

This appears to the court to be a non-issue in the present matters.

The claimant Clifton Bacchus was specifically identified by his name, his photograph with an accompanying caption together with the name of his business entities " Sleepin International Hotel and Casino " and therefore the identification of this claimant is not in issue.

The claimant Pasha Global Inc is identified in both publications by name. Further the defendants in the first publication created a link between Pasha Global Inc and Clifton Bacchus and the Sleepin International Hotel and Casino, which served in part as the catalyst for the second publication with the caption " THE DUTCH CONNECTION.....Sleepin Casino Surinamese partner was jailed for money laundering ".

The defendants in the first publication named Pasha Global as the purported partner of the claimant Bacchus and further published in the second article that the" Sleepin Casino Surinamese partner was jailed...."

Equally , in the second publication specific references were made in the second paragraph to " ....Yokohama which imports vehicles and operates in Suriname and Guyana.."

It has been submitted on behalf of the defendants that while the names of the claimants Clifton Bacchus and Pasha Global Group were mentioned that the name " Yokohama Trading Guyana Inc was not stated specifically as acknowledged by the witness for that company.

I am satisfied on a balance of probabilities that " ordinary sensible reasonable men having the knowledge proved " would be left in no doubt and understand the publications to refer to the claimants herein.

I disagree with the Defendants submission that in the case of Yokohama Trading the wrong party may have sued the defendants. On the contrary, there in no other entity by the name of Yokohama engaged in the sale of imported cars in Guyana. This is a case where more than one entity bearing the same name were entitled to file suit.

I am satisfied in all of the circumstances on the evidence before this court that this element of the tort has been established to the satisfaction of the court on a balance of probabilities in respect of all the claimants.

Issue: Whether any defence is available to the defendants .

The defendants in the three proceedings before the court rely on the defence of fair comment,or in the alternative, qualified privilege as set out in the final written submissions.

At the hearing of the interlocutory proceedings the defendants had indicated their collective intent in the three proceedings to rely on the defence of justification or truth at the trial.

However no such evidence was led or forthcoming at the trial to support this defence and for all intents and purpose the defendants have abandoned same. In the written submissions filed with the court in each proceeding the defendants have instead relied on fair comment and in the alternative qualified privilege.

I however wish to address the defense of Justification briefly for completeness.

Justification is an absolute defence to a claim for damages for defamation and the burden of proof rests solely on the defendant to establish on a balance of probabilities however the" more serious the allegation the more cogent is the evidence required "

David Price (supra) page 57, para 8-03.

The rule against repetition operates to prevent a defendant from relying on hearsay to support the defence of justification.

" The principle is further illustrated by the " rumour" or " hearsay " cases. Put in simple terms , where D reports A's claims that C is a thief, D cannot generally justify the statement merely by proving the literal meaning, i.e, that A has made the claim. He must also prove that C is a thief. The importance of the so -called rule against repetition was restated by the Court of Appeal in Stern v Piper [1997] QB 123 "

David Price (supra) at para 8-06.

Gilbert Kodilinye , Commonwealth Caribbean Tort Law , Fourth Edition , at page 246 noted

> " The defendant should not plead justification unless he has good reason to believe it will succeed, for failure to establish the defense will usually inflate any damages awarded against him, the court treating is as an aggravation of the original injury. The mere fact that the defendant has placed a plea of justification on the record is a matter which may be taken into consideration in assessing damages even though the defendant withdraws the plea at the trial or abandons it and relies on the alternative plea of privilege. "

The defendants having abandoned the defence of justification and having failed to adduce any evidence in support thereof, it accordingly fails in the circumstances.

Fair Comment.

The defendants have pleaded and rely on the defense of fair comment on a matter of public interest.

The classic statement of the law on fair comment was made by Fletcher- Moulton LJ in Hunt v Star Newspaper Co. Ltd [1908-10] All E.R Rep. 513 and was cited with approval by Bollers CJ. the case of British Guiana Rice Marketing Board v Peter Taylor & Co. Ltd (1967) 11 WIR 208 at 214.

" Comment in order to be justifiable as fair comment must appear as comment and must not be so mixed up with the facts that the reader cannot distinguish between what is report and what is comment . The justice of the rule is obvious if the facts are stated separately and the comment appears as an inference drawn on those facts any injustice it might do will be to some extent negatived by the reader seeing the grounds upon which the unfavorable comment is based...any matter therefore which does not indicate with reasonable clearness that it purports to be comment and not statement of fact cannot be protected by the plea of fair comment ."

Bollers CJ, British Guiana Rice Marketing Board (supra) at page 214.

> " Thus to enable alleged defamatory matter to be treated as comment and not as an allegation of fact, the facts on which it is based must be stated or indicated with sufficient clarity to make it clear that it is a comment on those facts."

Halsbury's Laws of England , Fourth Edition, Volume 28 , at paragraph 135 provides

> " .....The defence of fair comment is in the nature of a general right and enables any member of the public to express defamatory opinion on matters of public interest. Such opinion must be based on true facts or facts stated on a privileged occasion and the defence only applies to statements which are recognizable by the reader ....as expressions of opinion rather than statements of fact....."

Gatley on Libel and Slander 12th Edition 2013 at paragraph 12.7 similarly provides :

> " it is a fundamental rule that the honest comment defence applies to comment and not imputations of fact. If the imputation is one of fact the defence must be justification or privilege".

The author David Price in Defamation Law, Procedure and Practice (supra) at para 9-02, page 66, sets out the requirements a defendant must satisfy in order to successfully raise the defence.

" The defendant must overcome four hurdles in order to establish the defence :

1. The statement must be a comment and not a fact.

2. The comment must have a sufficient factual basis (that is, the comment must be based on facts which are themselves true).
3. The matter must be one which a " fair -minded " man could honestly hold. This is an objective test, but should not be confused with reasonableness.
4. The subject matter of the comment must be of public interest.

   Where these are surmounted the defence will succeed unless the claimant proves the comment was maliciously published."

Kodilinye (supra) at page 249 in examining the requirements for the defence noted:

> " The statement must be a comment or opinion and not an assertion of fact.
>
> It is essential to the defence of fair comment it must appear on its face to be a comment or opinion and not a statement of fact. If it is the latter , then the defence will not be available and the defendant will have to rely on justification. "

And further at page 249:

> " The comment must be based upon true facts.
>
> " A comment or opinion is not protected if it is based upon untruths, for " you cannot invent untrue facts about a man and then comment on them".

And further at page 258:

> " Defamatory comments will not be protected unless it is based on facts proved to be true. In Osadebay v Solomon (1983) Supreme Court , The Bahamas, No. 803 of 1979 (unreported) Da Costa CJ. explained the position " the comment must be an expression of opinion and not an assertion of fact , and the critic should always be at pains to keep his facts and the comments upon them severable from one another . For if it is not reasonably clear that the matter purported to be fair comment is such , he cannot plead fair comment as a defence. The facts themselves must be truly stated, as Fletcher Moulton LJ observed in Hunt v Star Newspaper Co. Ltd [1908-10] All ER Rep 513. 51

" in the next place in order to give room for the plea of fair comment , the facts must be truly stated. If the facts upon which the comment purports to be made do not exist, the foundation of the plea fails.....Finally , comment must not convey imputations of an evil sort except so far as the facts truly stated warrant the imputation."

Bollers CJ, in the local case of British Guiana Rice Marketing Board v Peter Taylor & C0.Ltd (1967) 11 WIR at page 208 at 213 stated :

" .....the defence is concerned with the expressions of opinion as distinguished from expressions of fact .....it is the comment that is protected ."

The approach to be adopted by the court where the defence of fair comment is raised was set out by Rampersaud J in his judgement delivered in Jwala Rambarran (supra) at page 14

" As a result the court has to first of all look at the statements to determine whether they are comments or imputations of fact. Following on from that if they are comments then the court has to consider the principle applicable at common law to this defence. That principle was set out in Ramlakhan v T & T News Centre Ltd CA CIV 30 of 2015 (unreported) where Mendonca JA said

" the position at common law is that the defendant may rely on the defence of fair comment only if he proves every fact on which the comment is based is true or is the subject of privilege. The question of privilege is not relevant to this case. In Kemsley v Foot [1952] 1 All E.R 501, supra, Lord Parker stated at 506 " in a case where the facts are fully set out in the alleged libel , each fact must be justified and if the defendants fails to justify one even if it be comparatively unimportant , he fails in his defence. "

On this issue the author Gilbert Kodilinye in his text (supra) at page 259 cited a decision of the West Indian Court of Appeal in Soltysik v Julien (195)5 19 Trin LR (Pt 111) 623 (West Indian court of Appeal), comprising Perez, Collymore and Jackson CJJ, at page 667:

" A writer may not suggest or invent facts or adopt as true the untrue statements of fact made by others and then comment upon them on the assumption that they are true. If the facts upon which the comment purports to be made do not exist the defence of fair comment must fail,....."

And further:

" The onus lay on the respondent to prove not only that that the subject matter was one of public interest but also that the words of the letter were a fair comment on it ...The letter here contained statements of fact and the onus was on the respondent to prove that the statements of fact were true ....."

Applying these principles to the statements made , printed and published of the claimants on the 15th and 17th of August 2017, I agree unreservedly with the submissions made on behalf of the Defendants that the operation of a casino may affect the interest of the community at large and the public may well have legitimate concerns as relates to its operation. Such operation would be within the realm of matters considered to be of public interest. I do not, however, find this to be the subject of the articles. The subject of the articles is informed by the caption of an investigation by SOCU ,and the fact that the Claimant or Claimants were caught by this money laundering investigation.

Kodilinye (supra) referred to the observations of Williams CJ in Mc Donald Farms Ltd. v. The Advocate Co. Ltd. (1996) 52 WIR 64, adopting the English position in Blackshaw v. Lord [1983] 2 ALL ER 311, which is appropriate in the circumstances:

" .....where damaging charges are made and are still under investigation, there can be no duty to report them to the public; nor was it a situation where the urgency of communicating a warning was so great that publication of a suspicion or speculation was justified."

Accordingly I hold that in view of the content of the publications the articles were not a matter of public interest.

I now review the articles hereunder and highlight some of the statements contained therein.

Reading firstly the headlines of the article dated 15th August.

> " Tracking the money , ...Sleepin boss, associates snared in money laundering probe .....SOCU tells Gaming Authority investigation on since 2016 .

This calumnious and contumelious imputation was published as a statement of fact by the defendants as the banner headlines of the first article, of and concerning the claimants. This defamatory and malicious statement was repeated on page 3 and set the tone of the equally disparaging content that followed. This was not a fair comment " honestly made", or a " genuine opinion " being expressed in good faith on a statement of facts of which the " substantial truth " has been established.

There was no evidence emanating from the defendants or any other source at the trial establishing the truth or tending to establish the veracity of this purported statement of fact in its ordinary and natural meaning that the claimant Clifton Bacchus ,the Sleepin boss and his associates, had been caught laundering money, in an investigation conducted by SOCU , that commenced in 2016.

On the contrary, the defendants failed to produce or lead a single witness from SOCU or any other agency ,to establish the fact of the existence of such an investigation in 2016 or at all.

The Claimant Clifton Bacchus testified that up to the date of trial he had never been contacted by SOCU and he unaware of any investigation, a position he had communicated via a public statement issued on the 15th of August 2017 in response to the first publication by the defendants, which he delivered to the office of the defendants.

1. The second statement published by the defendants in the first article stated : " The Gaming Authority could likely reject altogether an application for the Sleepin Hotel to operate a Casino here with the SOCU disclosing that the owner Clifton Bacchus and several of his associates are under investigation for money laundering since July last year.

This statement is a false imputation of fact , the truth of which has not been established by the defendants, but which the defendants nonetheless publish in an apparent effort to give credence to the libellous headlines .

The factual basis of this imputation is non-existent . There is simply no evidence before the court that supports this imputation. There was no evidence forthcoming from any witness of an investigation by SOCU of the Claimant Clifton Bacchus or of any purported associate. The onus lay on the defendants to discharge this evidential burden and they failed so to do. The letter tendered in evidence by the defendants purporting to emanate from the head of SOCU to the Chairman of the Gaming Authority ,of and concerning the first named claimant, is documentary hearsay, admissible not for the truth of its contents but for the fact of being the letter to which the witness makes reference. It falls into the category of documentary hearsay insofar as its contents are concerned as the claimants are unable to test the veracity of the statements contained therein, which are alleged to have been made by a third party who is not a witness at the trial and is the only person through whom the veracity of the contents can be tested save for evidence contained records kept and maintained by SOCU of its investigations. This is the basis of the rule against repetition stated above at page 22 . The malice on the part of the defendants becomes apparent when the letter is examined, nowhere did the defendants say the Gaming Authority will delay considering the application awaiting the outcome of any such investigation, but rather the Gaming Authority could likely deny . Deny means SOCU had in fact come to a conclusion on an investigation of which there was no result and the court is guided by the evidence, there was no evidence led to establish as a fact the existence of such an investigation in 2016 or at all, or of any circumstances which operated to the detriment of the claimant Clifton Bacchus before the Gaming Authority.

It is important to note two significant points at this juncture. Firstly the defence of fair comment is not available "where the statements of facts on which the comment is based , are in themselves of a libellous nature" per Bollers CJ, in British Guiana Rice Marketing Board (supra) at page 217.

Secondly, separately from any other consideration , " the inclusion of a number of false statements may in an appropriate case be considered as evidence of malice".

This court does find on a balance of probabilities that the inescapable conclusion arising from the totality of evidence adduced before this court is that the offending articles were maliciously published with " a corrupt motive or purpose " which shall be discussed in detail below .

3. In the third statement (first article):

   " Earlier this year the Authority had rejected Sleepin's casino licence application on the basis there was no evidence that the business was financially sound ."

The Defendants failed to provide any proof of this imputation of fact and which was false based on the evidence adduced by the defendants before the court. The defendants tendered in evidence a series of financials records, statements and other documents, of the claimant Clifton Bacchus and the Sleepin Hotel relative to this issue, which reflected that that claimant had obtained financing in the vicinity of a billion dollars, which had been secured by registered charges on his properties, from various financial institutions and entities.

The Gaming Authority, had found " that Sleepin International Hotel and Casino.....failed to provide the Authority with documents evidencing its financial soundness....." as opposed to concluding that the business was not financially sound, as falsely imputed by the defendants.

4. The second article bore the banner headlines " The Dutch Connection..... Sleepin Casino Surinamese partner was jailed for money laundering ."

   This headline, published as a statement of fact, states that a business partner involved in the Sleepin Casino with Clifton Bacchus ,was involved in money laundering and had been convicted and imprisoned for that offence. Further, that the Sleepin Hotel and casino and Clifton Bacchus were involved with this person and they were accordingly tarnished and libeled, having regard to the headlines.

   The truth of this statement of fact was not established by the defendants. No evidence was led to show who was this individual, or that the person was a partner of Sleepin

Casino, or that any partner or person connected to Sleepin Casino had been jailed for money laundering.

This article consisted of several statements of fact or imputation of fact in respect of which the defendants failed to adduce any evidence to establish the truth .

The defendants tendered in evidence a purported Wikileaks cable and sought to rely on same This document was admissible in evidence as being the document referred by the second named defendant as the basis and source of the information for the second publication. It is not admissible for the truth of Its contents which is documentary hearsay . As such, the defendants are required to prove the truth of its contents and more specifically the truth of each and every statement of fact and assertion published in the second article, which they failed to do.

Gilbert Kodilinye (supra) spoke of the duty on the defendants in such circumstances , at page 247.

" Where the defendant repeats a defamatory statement originally made by someone else, he must prove that the statement was true , not merely that it was made , and if you repeat a rumour , you cannot say it is true by proving that the rumour in fact existed , you have to prove that the subject matter of the rumour is true.

In relation to the articles dated the 15th of August 2017and the 17th of August 2017, the Court finds that both publications consist of several statements of facts and imputations of fact, of which the defendants have failed to establish the truth. The Court further finds that the defendants in relation to both articles, recklessly published same conscious that they were patently false or to which they were indifferent to ascertaining the truth.

The defence of fair comment which is intended to protect the comment and opinion of the critic genuinely and objectively made on a statement of fact, the truth of which has been established , on a matter of public interest ,is therefore misconceived in the circumstances.

In such circumstances as these where the publications consists of a series of statements of fact and imputation of facts the defence has to be one of justification and not fair comment. This defence of justification, which requires a defendant to prove the truth of the statement of facts. Though raised and argued at the stage of the interlocutory proceedings , and pleaded in the defence, was subsequently abandoned by the defendants.

My findings bring this issue to an end insofar as the defendants have raised and sought to rely on the defence of fair comment.

However there is another aspect of this matter which arises from the evidence and which the court finds gravely troubling and feels compelled to mention. This is that the publication of the articles was pursuant to an improper purpose, which acted as the catalyst for the publication of the defamatory articles. Such a finding independently of any other consideration serves to defeat the defence of fair comment in that the effect of malice is that " the defendant did not believe in the opinion he was expressing and had an improper motive for expressing it....."

David Price (supra) at paragraph 9-02, page 66.

Qualified Privilege

The defendants have raised in the alternative the defence of qualified privilege.

The defence of qualified privilege can only be sustained in the absence of malice.

Halsbury's Laws of England , Fourth Edition , Volume 28, paragraph 109 , page 55 on the defence of qualified privilege states :

> " On the grounds of public policy the law affords protection on certain occasions to a person acting in good faith and without any improper motive who makes a statement about another person even when that statement is in fact untrue and defamatory. Such occasions are called qualified privilege...."

Lord Atkinson in Adam v Ward [1917] A.C at 334 on this question of privilege stated :

" A privileged occasion is an occasion where the person who makes the communication has an interest, or a duty, legal , social, or moral to make it to the person to whom it is made and the person to whom it is made has a corresponding interest or duty to receive it. This reciprocity is essential. "

In the case of Trinidad Express Newspaper Limited et al v Conrad Aleong, Civil Appeal No. 122 of 2009 (unreported) The Court of Appeal of Trinidad and Tobago considered the defence of Reynolds privilege or public interest privilege and its application.

Justice of Appeal M. Rajnauth-Lee at 25 stated :

" The defence of Reynolds privilege or public interest privilege was considered by Lord Nicholls in Reynolds v Times Newspapers Ltd and Others [1999] 3 W.L.R 1010. He noted that the essence of this defence lay in the law's recognition of the need in the public interest for a particular recipient to receive frank and uninhibited communication of particular information from a particular source . Lord Nicholls said that the law was indeed concerned to attain that end by protecting the maker of that statement. He observed the court had to assess , whether in the public interest , the publication should be protected in the absence of malice ."

In Jameel (Mohamed) v Wall Street Journal Europe Sprl [2007] 1 AC 359, Lord Hoffman said the question to be determined by the Court, where the defence of qualified privilege is raised, is whether the articles published by the Defendants were the products of responsible journalism. He went on to format the approach to determine this issue.

Lord Hoffman posited that the issue then to be determined by the Court where the defence is raised, is the context of this case whether the articles published by the Defendants on the 15th and 17th August, 2017 were the products of responsible journalism.

The defence of qualified privilege fails on two grounds:

1. The Court finds as a fact on the evidence adduced before it, that there was malice on the part of the Defendants in the printing and publication of the two articles.

2. Secondly that the articles were not the product of responsible journalism, quite the contrary, the publications reflected a callous indifference to the truth, was devoid of journalistic enquiry, reckless and irresponsible.

1. MALICE

Halsbury's Laws of England , Fourth Edition, volume 28, paragraph 149 provides " Express or actual malice is ill- will or spite towards the plaintiff or any indirect or improper motive in the defendant's mind which is his sole or dominant motive for publishing the words complained of ."

The burden of proving malice lies on the claimants who are required to include in the Reply filed the " particulars of the facts and matters from which the malice can be inferred ."

Evidence proving malice can arise either from the words published themselves referred to as intrinsic or external circumstances referred to as extrinsic circumstances.

In the case of Horrocks v Lowe [1975] A.C 135, the House of Lords set out the general principles in relation to malice.

These principles were summarized by the author David Price , (supra) at page 157, paragraph 18-04.

1. " Malice is an improper motive on the part of the defendant which is the dominant motive for making the defamatory statement....."
2. " The motive with which a person makes a defamatory statement can only be inferred from what he did , or said or knew.
3. "Where the defendant knew what he published was false it will generally be conclusive evidence of a dominant improper motive....."
4. **"A defendant who is indifferent to the truth i.e. does not care whether the statement is true or false, is treated as if he knew it to be false. In such a case the**

defendant is said to be reckless. Recklessness is more commonly alleged than actual knowledge because it is lower evidential burden to overcome. "

5. "However, Indifference to truth is not to be equated with carelessness, impulsiveness or irrationality. It is in the public interest that the defence of qualified privilege is available to all persons not just those who act sensibly.
6. It is possible that a defendant who believes what he says is true may nevertheless have an improper motive for saying it . However this will be very rare ....."

Further at page 161, paragraph 18-10, the learned author continued :

" Another way of inferring malice is by contrasting what the Defendant did with what a reasonable person would have done. **This is relevant in relation to the extent to which the Defendant has taken steps to verify the truth of the statement. .....where the allegation is made on the basis of information from a third party** and a slight inquiry on the part of the Defendant most notably by asking the Claimant would have ascertained whether the information was reliable**, it may be alleged that the Defendant deliberately omitted to take such steps because he did not care whether it was true or not**. The Defendant is accused of having a Nelsonian vision....."

Applying these principles to the evidence, under cross-examination, the second-named Defendant, The Editor, Nigel Williams, testified:

" I agree I am a responsible journalist with several years of experience as Editor-in-Chief.....I agree it is necessary to ensure the law of defamation is taken into account before publication because what is published may have the consequence of destroying character, reputation and goodwill of individuals and companies..... I agree the entire publication on the 15th was about Clifton Bacchus and his associates.....I agree I did not try to contact Clifton Bacchus.....I agree I knew where the Sleep-in Hotel is in relation to the office of the Guyana Chronicle.....I agree it is in close proximity.....I agree I did not try to contact Sleep-in Hotel..... I nor anyone tried to contact the Claimant, Pasha Global....I did not enquire or try to find out from the

Company Registry who were the principals of Pasha Global.....I am aware that Clifton Bacchus issued a public statement in response to the first article published by the Guyana Chronicle.....I agree I was aware of Mr. Bacchus' public statement when the second article captioned ' Dutch Connection' was published. I agree in the second article we expanded what was published in the first article. I agree that that article made no reference to Mr. Bacchus' public statement or that he denied the contents of the first article, I agree no one from the Guyana Chronicle made checks at the Company Registry to determine the owner or officers of Yokohama Trading , I agree the article mentions allegations of drug trafficking and money laundering, I agree that Yokohama Trading is located at 75 Barrack street Kingston , I agree I made no effort to contact an officer of that company for their view when writing the article, I agree no one tried to contact Pasha Global Inc in Guyana or Suriname, I did recognize the allegations and implications in the article to Bacchus and the two companies were serious, I cannot deny that Sleep-in has been in existence in existence of 15 years, I agree the articles were based upon two letters between Forde and SOCU, Sleep-in's application to the Gaming Authority and Wikileaks "

The evidence adduced by the second named defendant on behalf of the defendants reflected an abandonment of and is devoid of any journalistic principles and practice, revealed a reckless and callous indifference to the truth, a studied effort of avoidance of any attempt at verification and a deliberate omission and refusal to conduct the slightest inquiry leading to the inescapable conclusion that the articles were published maliciously based exclusively on improper motives and considerations on the part of the defendants.

2. Whether the articles were the product of responsible journalism:

In determining this issue , Lord Hoffman in Jameel (Mohamed) v Wall Street Journal Europe, [2006] UKHL 44 posed 3 questions

a) Whether the subject matter of the article was a matter of public interest .

b) If yes, whether the inclusion of the defamatory statement was justified .

c) If yes whether the steps taken to gather and publish the information were responsible and fair.

The second and third questions were considered together by Lord Hoffman under the head " responsible journalism " and in treating with that issue considered the list of illustrations set out hereunder as provided by Lord Nichols in Reynolds (supra).

Dealing firstly with the question whether the subject matter of the articles was a matter of public interest, the court has considered this issue earlier at page 26 above and that position and finding is applicable .

I deal with with the second and third questions from the perspective of the Reynolds illustrations:

1. <u>The seriousness of the allegation</u>:

   The more serious the allegation the more serious the individual is harmed if the allegation is not true.

   The allegations made against the claimants are of a fundamentally grave nature, in that the claimants are held out as being part of an international criminal enterprise engaged in transnational crimes including narcotrafficking and money laundering. In this regard the claimant companies are held out as using its international corporate standing to facilitate various criminal activities, likewise the international hotels of the claimant Clifton Bacchus and Bacchus himself , are similarly labelled.

   No evidence has been adduced before the court to prove any of the allegation made against the claimants.

   The potential harm to the claimants is both catastrophic and devastating for reasons on record.

2. <u>The nature of the information and the extent to which the subject matter is a matter of public concern.</u>

   This matter has been addressed above separately.

3. The source of the information.

The defendants did not, based on the testimony of the second named defendant, obtain the information from a credible or reliable source, did not attempt to verify or validate same, relied on documentary hearsay as truth of the matters stated therein, failed to take the slightest step to verify the accuracy thereof.

4. Steps taken to verify the information:

The testimony of the second named defendant is instructive. The defendants failed , omitted and or refused to contact the claimants, failed to publish a statement issued by the claimant Clifton Bacchus in response to the first publication, failed to contact the corporate offices of the claimant companies, failed to make checks at the Company Registry , failed to take any measure or however slight to verify the information.

5. The status of the information:

The defendants have failed to establish the truth of a single allegation contained in the publications, raised the defence of justification holding out that they were in a position to prove the truth of the statements then later abandoning same.

The information consists of a series of falsehoods.

6. Urgency of the matter:

The timing of the matter from the perspective of the claimants appeared to be calculated to have a detrimental impact upon the claimant Clifton Bacchus's application for a casino licence as the Gaming Authority had been scheduled to visit the carnival casino on the 16th of August.

There was no urgency of the matter to cause the defendants to abandon journalistic practices and inquiry, or to fail to conduct a verification of the matters, or more importantly to omit to ascertain the truth by contacting the claimant Clifton Bacchus. The reckless indifference of the defendants to the truth becomes more apparent when one

considers the defendants had in their possession the public statement released by Clifton Bacchus denying the allegations made against him by the defendants in the first publication and putting his side of the story. The defendants concealed the fact of his denial of the allegations and his response thereto and published a second article, repeating the allegations contained in the first article and publishing a more damaging allegations.

7. Whether a comment was sought from the claimants:

   The defendants failed to obtain a comment from any the claimants, the corporate offices, staff, or made any visible effort so to do.

   The evidence of the second named defendant which appears on pages 34 and 35 ante is instructive.

8. Whether the articles contained the gist of the claimants side of the story:

   The articles did not contain the claimants version of the story as no effort was made to obtain a comment from the claimants, the offices of the claimants, or members of staff. On the contrary, material available and in possession of the second named defendant containing the gist of Clifton Bacchus' side of the story was concealed or at best ignored.

9. Tone of the article:

   The authors of the articles undoubtedly set out to denigrate, embarrass and humiliate the claimant Clifton Bacchus by labelling him and his international hotels as part of a criminal enterprise, a purpose that was achieved.

   Equally the corporate reputation and standing of the claimants, Yokohama Trading Guyana Inc and Pasha Global Inc , were shredded at the instance of the defendants.

10. The circumstances of the publication, including timing.

    Both articles were printed with banner headlines, in the singular most position of prominence, on the front page of the Guyana Chronicle Newspapers, on both occasions.

The articles were printed with bold font, accompanying photographs of the claimant Clifton Bacchus and the most recent hotel, the Sleep-in International Hotel and Casino and continued on the pages 2, 3 and 8. Each article contained different segments with a different sub-head in bold print.

This court cannot and does not in the circumstances find either of the articles and publications to be a product of responsible journalism and the defendants have failed to establish a defence.

DAMAGES:

1. In these matters, damages are at large and General Damages are awarded to compensate the Claimant for the wrong suffered, for injury to his or its reputation, vindicate his good name and for hurt, humiliation and embarrassment, though the latter is not applicable to a corporate claimant. A corporate claimant is however entitled to an award of damages for injury to its trading reputation.

In British Guiana Marketing Board v. Peter Taylor (supra), Bollers CJ held that a corporation can maintain an action for libel reflecting on the management of its trade or business and injuriously affecting the corporation as distinct from the individuals who comprise it.

2. On the evidence, this Court has found that the Defendants, the Publisher and Editor of the Guyana Chronicle newspaper, without inquiry or investigation as expected of experienced journalists in their profession, sat on their laurels and without lawful cause, but infected with malice, launched these libellous publications which were displayed with enthusiastic prominence. The Defendants remained indifferent to its consequences of inflicting pain, hurt, shame, humiliation, ridicule and reputational damage to the Claimants depriving them of their due and rendering them a pariah in the business and financial community. This was done without apology or communication from the Defendants showing remorse or regret for their malicious conduct.

3. In assessing the appropriate award of damages in the present matter, I have considered the following factors which are equally applicable to the three claimants.

(a) The gravity of the allegation:

The principle was stated by Sir Thomas Bingham MR in John v. MGN Ltd. [1997] QB 596 at 607:

> " The successful claimant in a defamation action is entitled to recover as general compensatory damages such sum as will compensate him for the wrong he suffered. That sum must compensate him for the damage to his reputation. It must also vindicate his good name and take account of his distress, hurt and humiliation. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel. The more closely the defamation touches the Plaintiff's integrity, professional reputation, honour, courage, loyalty and the core attributes of his reputation, the more serious it is likely to be. The extent of the publication is also very relevant . "

The single most important factor is **the gravity of the libel**.

In the matters before this Court, the imputations made and published of the Claimants is that they are a part of a criminal enterprise engaged in money laundering and other crimes on a significant scale. The nature and gravity of the allegations and imputations constitute a direct attack upon the Claimants' professional and business trading reputation.

The gravity of the allegations has the potential effect of devastating and dire consequences for the claimants as a direct result of the defamatory publications. A state of affairs aggravated by the fact that each claimant's business has or involves an international component which renders each claimant vulnerable to the dangers posed by the circulation of the publications ,in this era of international financial regulations geared to eliminate money laundering and related activities.

In the case of Pasha Global Inc. (SOC-253), this entity is engaged in the operation of casinos across several different countries. The witness, Erdener Yakici, a director of this company, in his evidence highlighted the potential for catastrophic consequences to the company:

> " The claimant company conducts casino business operations in several different countries."

In answer to the question whether the company had suffered loss as a result of the defamatory publications:

> " Till now it has not caused us any financial loss, the question of our reputation this is a small world, this article caused questions to be asked by our casino suppliers. It has made things difficult for us. The casino world is small, something happens here Africa becomes aware immediately.
>
> The Casino Supply Company are multibillion dollars companies based on the stock exchange. They cannot do business with any company which has a question mark. This article has an ironball effect, it can cause big damage to our company. If the suppliers do not give us casino equipment, our company will crash.
>
> We are in Africa, Nicaragua, Georgia, Bulgaria and each country has their own Gaming Code."

The Yokohama Company engages in the purchase of used vehicles from Japan for sale in Guyana.

The Sleep-In Hotels, owned and operated by Clifton Bacchus, are international hotels and with guests from different countries who comprise the backbone of its operations. Since the publication of the article, Clifton Bacchus testified that his credit card terminal was removed by the Bank of Nova Scotia.

(b) The effect of the publication

Where a claimant suffers abuse, exclusion or discrimination, this will have a significant effect on damages.

The matters discussed above are equally relevant to this factor.

The publications have the potential effect of imposing dire consequences on the Claimants based on the nature of their business operations. The fact that the businesses are not localized nor isolated, coupled with the fact that its operations involve the movement of funds via international transactions and bearing in mind the potential consequences that the Director of Pasha Global alluded to in his evidence.

(c) **The size and influence of the circulation**

The positioning and prominence given to the allegation is important. In relation to this factor, the second-named Defendant testified that the Guyana Chronicle newspaper has a daily circulation throughout Guyana, together with a hard copy circulation of a weekly edition in the USA. The second-named Defendant also testified that the Guyana Chronicle newspaper had an online circulation accessible on the worldwide web and that the available data showed that it is widely read and it was accessible via Facebook.

The evidence before the Court is that the publications remained online at the date of trial on the Defendant's site.

The principle is that the scale of damages will be substantially less where the dissemination of the libel via publication is limited or localized.

Equally, the position and prominence accorded to the libel in the publication is relevant in so far as it relates to its influence on the readership. The publications were both local and international, online and hard copy, in dissemination wide and far. The libels were on both instances accorded the most prominent position as banner headlines on the front page and continuing on pages 2 and 3 with accompanying bold captions and photographs.

Simply put, there could be no greater position of prominence nor a more significant banner headline to publish an equally grave allegation.

(d) **The extent and nature of the Claimant's reputation**.

The rebuttable presumption is that the Claimant has a good reputation with larger awards of damages to well-known personalities.

The evidence before the Court is relevant to this fact in the case of the Claimant, Clifton Bacchus, the owner of three international hotels in Guyana and the majority shareholder in the Sleep In International Hotels and Casino, the recently constructed entity, with an international clientele. Equally, the Claimants, both Yokohama and Pasha Global Inc, conduct business on the basis of their reputation and name on an international scale.

I have found the following aggravating factors on the evidence in the circumstances of these matters.

Aggravating Factors

" Aggravated damages are awarded where the conduct of the Defendant increases the injury caused to the Claimant."

In Praeo v. Graham (1894) 24 QBD 53 AT 55, Lord Esher MR said:

> " The jury in assessing damages are entitled to look at the whole conduct of the Defendant from the time the libel was published down to the time they give their verdict. They may consider what his conduct has been before the action, after action and in court during the trial.

(a) The Defendants failed to take any step consistent with responsible journalism to verify the accuracy of the allegations before the publication of the disparaging statements and the absence of any hint of editorial judgment.

To say that the articles and publications were the product of irresponsible journalism will be modest.

The second-named Defendant testified he was a journalist for in excess of fifteen years and an experienced Editor-in-Chief who conceded his knowledge of the basic duties and responsibilities of a journalist consistent with responsible journalism, that is, to check the accuracy of facts prior to publication, obtain a view from those subject of the article , ensure the publications are not defamatory because of possibility of its devastating consequences on the character, reputation, standing and goodwill of individuals and business corporations.

The second-named Defendant acknowledged that while the entire article was about Clifton Bacchus and his associates, he failed to make contact with him.

The Court rejects out of hand the feeble attempt to explain this outrage where the second-named Defendant said he was unable to contact Clifton Bacchus, but admitted failing to try Sleep-in or visiting the hotel which was in close proximity to the office of the Guyana Chronicle. This witness later conceded that he personally made no effort to contact Clifton Bacchus.

The second-named Defendant also admitted he did not try to contact the Claimant Pasha Global nor did he check at the Company Registry who were the officers, principals and shareholders of that entity.

The second Defendant conceded he was aware that Clifton Bacchus issued a public statement on 16/08/17 following the publication of the article on the 15/08/17 in response to the article and notwithstanding this, published a second more elaborate publication on the 17/08/17. In that publication, there was no reference to the public

statement of Clifton Bacchus or its contents, a fact of which he was aware at the time of the publication of the second article. The second article, if anything, sought to surpass the depths of depravity it failed to descend to in the first publication.

The second Defendant agreed that the allegations and implications to Clifton Bacchus and the two claimant Companies were serious indeed. Notwithstanding this, he made no effort to contact either of the entities either in Guyana or Suriname prior to the publications. This witness conceded that the single source of the defamatory allegations which has wreaked untold damage and destruction and vilified the Claimants with the most damaging of imputations was an unverified narrative consisting of palpable hearsay contained in a Wikileaks cable, the truth of which the Defendants have failed to establish. This was notwithstanding a plea of justification which it abandoned, itself an aggravating factor in the assessment of damages. The reason being the Defendants notwithstanding the full knowledge and awareness of their omissions and derelictions remained indifferent to the truth and persisted in the ill-founded plea of justification which was simply another link in the chain of the grossly improper conduct on the part of the Defendants.

The following aggravating factors are highlighted by the Court:

(1) The Defendants' despicable conduct and all of the matters related thereto highlighted in the evidence.

(2) Malice on the part of the Defendants, willful, deliberate and express.

(3) The persistence in raising, maintaining and pleading the ill-founded plea of justification.

(4) The failure of the Defendants to apologise or retract or publish an apology.

(5) The failure of the Defendants to take cognizance of the documents they had in their possession, that is, the Claimants' application to the Gaming Authority.

(6) Deliberate false statements in the content of the publications.

The second-named Defendant testified that he had obtained this confidential document with its accompanying attachments prior to the publication of the first article. Among these documents were the audited financial statements of the Sleep In International Hotel and Casino together with proof of financing to Clifton Bacchus and Jennifer Paul Bacchus in the form of registered secured debts totalling 1 billion dollars.

The flood of libel, vilification, humiliation, and utter contempt for the truth was levelled against the Claimants but none more so than Clifton Bacchus.

The Court is confronted with a libel beyond measure, reckless, baseless and irresponsible. The gravity of this libel , the impact and devastation on the Claimants is without parallel in the records of our jurisprudence. The Court is struck by the fact as accepted by the second-named Defendant, that Clifton Bacchus had for in excess of 15 years been involved in the construction, ownership and management of hotels under the Sleep In brand. He has in this trial established that he has the ability, means and financial worthiness to lawfully conduct the business he was engaged in. He had in fact shortly prior to the offensive publications completed construction of the new 150 room Sleep-In International Hotel and Casino.

His documents, in the Defendants' possession established that he had access to and obtained financial resources extended to him based on his credit worthiness. The timing of the publications was significant, that is, the 15th and 17th August, as the evidence disclosed that the Gaming Authority before whom the application for a casino licence had been renewed by Clifton Bacchus, was scheduled to visit the Carnival Casino on the 16th August as part of its consideration of the application. The evidence before the Court established that Clifton Bacchus had, prior to the publication of the articles, imported and set up all of the casino machinery, games and equipment. Additionally, he had trained the staff intended to operate the Casino.

What then could have influenced and motivated an experienced and seasoned journalist, an Editor-in-Chief such as the second-named Defendant to abandon his hard-earned status, training and duty and embark on this course? The inescapable inference which arises on the evidence is that the malicious publications were calculated to influence the process and deny him the casino licence for which the Claimant, Clifton Bacchus, had applied.

Gilbert Kodilinye (supra) at page 286 states that " the traditional view is that the court has no power to make a further award for exemplary damages unless it is proved that the case falls the second category of exemplary damages as set out by Lord Devlin in Rookes v Barnard 1964 AC 1129 at 1226 where the defendant had contemplated that the profit he would make by the publication would exceed the damages he might have to pay "

The distinction has to be drawn and borne in mind that different considerations apply where the media house publishing the offending articles is a state owned entity, and hence the objective of a defamatory publication must be considered other than from a purely financial standpoint .

Financial considerations have not in the past been the overriding objective of a state owned media house.

If therefore the publication of the offending article by a state owned media entity was not based on hope of a financial reward but another objective not unrelated to the fact of the publication by state media and the article was not the product of responsible journalism, it can be argued that the principle behind the second category in Rookes v Barnard has been satisfied, as in the present case.

I have found no mitigating factors in the evidence before me in the case of Clifton Bacchus v. GNNL and the Editor. In the circumstances based on the facts I have narrated as it relates to general damages to vindicate the Claimant's reputation, to console him for the wrong done to him and taking account of the aggravating factors I have considered as being applicable, the Court is of the view that the Claimant, Clifton Bacchus, is entitled to compensatory damages with an uplift for aggravated damages in the sum of $25 million dollars.

In determining the appropriate award of damages I have been guided by the dicta of the CCJ in Ramsahoye v Lall and another 2016 89 WIR 381 and I have used as a starting point the award made by the Persaud J as he then was , based on the claim filed in 2001 and heard in 2008.

I have made adjustments for the gravity of the allegations, reputational damage suffered by the claimants in the present cases together with the multitude of aggravating factors,

I hold the view that the circumstances of the instant matter fall within the ambit of that described by Gordon JA in Mitchell v. Fassini (2004) Court of Appeal OECS Grenada, Civ App No. 22 of 2003, (unreported)

The extract of the case cited above and quoted hereunder was taken from Gilbert Kodilinye, Tort Law , (supra) at page 286-287.

" Gordon JA took the view that the Defendants had committed an egregious libel, they had not a scintilla of proof, nor even a whiff of suspicion of the truth of their statements, they had not offered any apology or the offer thereof, and they were contemptuous of the right and entitlement of every citizen to enjoy his reputation for rectitude, absent of proof to the contrary. Exemplary damages were accordingly awarded. "

I award to the Claimant the further sum of $2,500,000.00 as exemplary damages under this head and in keeping with the principle of a single award the Claimant in SOC/252 of 2017, Clifton Bacchus, is awarded damages in the sum of $27,500,000.00

The Claimants, Yokohama Trading Guyana Inc. and Pasha Global Trading Inc are each awarded the sum of $12,500,000.00 with an uplift for aggravated damages bearing in mind the distinction between a corporate entity which does not suffer injury to feelings, humiliation, pain and embarrassment, odium and public ridicule in the manner of the individual person who is entitled to damages to vindicate his good name, compensate him for the damage to his reputation, and injury to feelings, hurt and humiliation.

It is further ordered and directed and a permanent injunction be and is hereby granted in terms of paragraph 1 (iii) of the Claimant's Statement of Claim.

It is further ordered and directed that the Defendants do remove within 48 hours of this Order the articles and publications from its online platform on the worldwide web.

Costs in the sum of $350,000 to each Claimant.

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JUSTICE SANDIL KISSOON

Dated this 16th day of October, 2020.

THE SUPREME COURT OF JUDICATURE OF GUYANA