

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT OF THE BAHAMAS  
COMMON LAW & EQUITY SIDE  
2013/CLE/gen/01662**

**BETWEEN**

**DR. THEODORE FERGUSON  
Plaintiff**



**AND**

**THE PUBLIC HOSPITALS AUTHORITY  
First Defendant**

**AND**

**DR. PAUL WARD  
Second Defendant**

**BEFORE:** The Honourable Justice Petra M. Hanna-Adderley

**APPEARANCES:** Mrs. Ruth Bowe Darville for the Plaintiff

Mr. Kirkland Mackey, Miss Janet Hall and Ms. Lukeller Lindor for the Defendants

**TRIAL DATES:** 31<sup>st</sup> October, 1<sup>st</sup> November, 2017; 23<sup>rd</sup> and 24<sup>th</sup> April, 16<sup>th</sup> May, 2018

**SUBMISSIONS:** Plaintiff's Closing Submissions dated 5<sup>th</sup> December, 2018 and received 11<sup>th</sup> December, 2018

Defendant's Closing Submissions undated and received 29<sup>th</sup> January, 2019

**JUDGMENT**

**Hanna-Adderley, J**

**Introduction**

1. The Plaintiff is a medical doctor employed by the Bahamas Government in the Ministry of Health, Public Hospitals Authority as a Consultant Surgeon. The Second Defendant is a medical doctor and employed by the Bahamas Government in the Ministry of Health, Public Hospitals Authority as Medical Chief of Staff at the Rand Memorial Hospital and Grand Bahama Health Services at Grand Bahama at the commencement of this action. The First Defendant is a statutory board responsible for the management and development of public

hospitals namely the Princess Margaret Hospital ("PMH"), Sandilands Rehabilitation Centre and the Rand Memorial Hospital. This is an action commenced by the Plaintiff against the Defendants by way of a Generally Indorsed Writ of Summons filed on October 11, 2013. The Plaintiff claims damages against the Defendants for libel contained in a letter dated June 6, 2013 signed by the Second Defendant, the servant or agent of the First Defendant. The said letter was addressed to Ms. Catherine Weech and circulated and published to the Medical Chief of Staff of the Princess Margaret Hospital ("PMH"), the Chief of Staff of PMH, the Medical Advisor for the Public Hospitals Authority ("PHA"), the Chairman of Medical Affairs of the PHA, the Managing Director of the PHA and the Executive Management Committee of the Grand Bahama Health Services ("GBHS"). The Plaintiff seeks damages for libel, interest, costs and further and other relief which to the Court seem just.

2. The Defendants entered an Appearance by filing their Memorandum and Notice of Appearance on October 25, 2013.
3. The Plaintiff subsequently filed his Statement of Claim on February 10, 2014 whereby at paragraph 4 he reproduces the June 6, 2013 letter written and signed by the Second Defendant which he alleges contained words that are defamatory to the Plaintiff. He further alleges that the said letter was addressed to Ms. Catherine Weech, Hospital Administrator, an agent of the First Defendant and the same was published to other readers who are agents of the First Defendant namely Mr. Herbert Brown, Managing Director of PHA; Mr. Robert Gibson, Chairman of Medical Affairs of PHA; Dr. Glen Beneby, Medical Advisor of PHA; Chief of Surgery at PMH and Dr. James Johnson, Medical Chief of Staff at PMH. The Plaintiff alleges that the Second Defendant knew that the letter was likely to be opened and read by those to whom it was sent. The Plaintiff further alleges that:-
  - a. the words in the letter in their natural and ordinary meaning meant and were understood to me that the Plaintiff was insubordinate, had no respect for authority or established protocol, could not get along with his colleagues, was not a team player, was unprofessional in his demeanour and dress, provided unsatisfactory health care and endangered the life of his patients;

- b. by way of innuendo the words complained of meant or were understood to have the same meaning as set out above;
  - c. the said words were calculated to vilify, disparage, and demean the Plaintiff during the course of his employment exposing him to hatred, ridicule and contempt by his colleagues and other right thinking members of society and in particular his surgical colleagues and those administrators responsible for his appraisal as a competent medical professional.
4. The Plaintiff alleges that by reason of the publication of words complained of his reputation has been seriously damaged and has suffered hurt, distress and embarrassment in his place of employment and within the medical community and generally. The Plaintiff also pleads that he made it clear to the Defendants that the words complained of are entirely false and baseless and by letter dated July 23, 2013 through his Attorney demanded an apology from the Defendants to which the Defendants have either failed or refused to do so or retract the said statements.
5. The Defendants filed their Defence on March 13, 2014 and admit the contents of paragraphs 1-3 of the Statement of Claim however in response to the remaining paragraphs of the Statement of Claim they aver that:-
  - a. while they admit that they wrote the said letter to the Plaintiff they deny paragraph 4 of the Statement of Claim and state that the words were published on an occasion of qualified privilege. They further state that the said letter was written in response to concerns regarding the Plaintiff and under a sense of duty and without malice towards the Plaintiff and in the honest belief that the views made were true. They set out numerous particular in response such as the Plaintiff ignored the PHA Supervisor Manual: Transfer Procedure; affected his transfer to PMH without the consent of the Defendants; the Plaintiff did not adhere to the PHA Employee Handbook: Public Image/Dress Code by not wearing the prescribed white lab coat and instead wore a black tam, jeans, t-shirt and no identification badge, wore his hair plaited and did not obtain permission to wear this; the Plaintiff did not conduct Doctor's Rounds and when advised by his supervisor of his behavior being unacceptable, replied that it was not standard practice where he

was trained and did not change his behavior; the Plaintiff ineffectively communicated with both nursing and physician staff; the Plaintiff took on cases that were beyond his level of competence in that environment and did not accept or encourage advice; the Plaintiff took an inordinately long time with some simple surgical cases; the Plaintiff was not willing to assist with supervising medical staff in accordance with his job description and failed to demonstrate professionalism by the manner in which he dressed; the Plaintiff was emotionally unstable demonstrated by outburst, threatening remarks and use of foul language at Clinical Management meetings where members of the Executive Management Committee and various levels of medical and nursing staff were present; the Plaintiff disregarded authority. They also state that the Second Defendant acknowledged that the Plaintiff enhanced the Endoscopy Services at the Rand Memorial Hospital ("RMH"); the Second Defendant is accountable for all members of staff and should know where they are at all times and also responsible for approving all request for leave;

- b. while they admit the contents of paragraph 5 of the Statement of Claim they state that the letter was addressed to Ms. Catherine Weech in her position as Hospital Administrator of GBHS and as the Second Defendant was the Medical Chief Of Staff he was under a duty to publish the letter and she was under a duty to receive it;
- c. while they admit the contents of paragraph 6 of the Statement of Claim they state that the letter was copied to the mentioned persons as they are senior medical management personnel in the PHA and are responsible for quality assurance, the welfare and safety of all patients throughout the PHA. These included Mr. Hubert Brown, the Managing Director of PHA; Dr. Robert Gibson, the Medical Affairs Chairman on PHA Board; Dr. Glen Beneby, the Medical Advisor for PHA; Dr. Lockley Munroe, the Chief of Surgery for PMH and Dr. James Johnson, the Medical Chief of Staff for PMH. That these senior medical management personnel had a common and corresponding interest in the subject matter and the Defendants were under a duty to publish the letter to them and had a duty to receive it;
- d. while they admit the contents of paragraph 7 of the Statement of Claim they state that every PHA member of staff upon commencing employment must sign a

binding Confidentiality Agreement and as such the letter was only meant to be seen by those that it was addressed to;

- e. that the Defendants deny that the words said bore or were understood to bear or were capable of bearing or being understood to bear any defamatory meanings set out at paragraph 8 of the Statement of Claim. That the letter was written by the Second Defendant in his capacity as Medical Chief of Staff of GBHS carrying out his responsibility of providing guidance and growth to all medical professionals under his charge;
  - f. paragraphs 9 and 10 of the Statement of Claim are denied and they repeat their qualifications at paragraphs 4 and 8 of their Defence;
  - g. they deny paragraph 11 of the Statement of Claim and state that the words were published on the occasion of qualified privilege and the Defendants wrote the letter under a sense of duty; without malice towards the Plaintiff and in the honest belief that the statements made were true. They further state that any concerns the Plaintiff had were not as a result of the Defendants' letter;
  - h. that they admit that the Plaintiff did send a letter dated July 23, 2013, they deny paragraph 12 of the Statement of Claim.
6. The Defendants last paragraph of their Defence is the general traverse contained in most Defences whereby they deny every allegation in the Statement of Claim.
  7. The Plaintiff filed his Reply on June 16, 2014 whereby he denied that the words complained of were published on an occasion of qualified privilege as alleged or at all and sets out numerous particulars in response. These include:-
    - a. that the allegation was of extremely serious professional misconduct, likely to do serious damage to the Plaintiff and public confidence in the medical profession he serves;
    - b. the words complained of go far beyond the information that the Defendants assert as being in response to a concern regarding the Plaintiff, the said concern being unsubstantiated.

8. The Plaintiff also denied that he did not observe the proper protocol when requesting his transfer to PMH and that he did not get the consent of the Defendants when transferring. He states that he gave due notice to all parties of his intention to transfer. The Plaintiff also states that the Second Defendant was aware of the Plaintiff's plan to transfer and that his transfer had been effected; that the Second Defendant was first advised by letter of the Plaintiff's intention but refused to answer the said letter; that the said letter was provided to Dr. Lockhart, Chief of Surgery who indicated that the Second Defendant would answer his request for transfer, but no such response was forthcoming from the Second Defendant.
9. The Plaintiff states that his dress was not offensive to the prescribed Dress Code as stipulated in the PHA Employee Handbook; that he was not required to wear a white lab coat and was ever provided with a "Lab Coat Allowance" and maintains that he always wears his identification badge and is properly dressed when at the hospital or dealing with patients.
10. The Plaintiff strenuously denies the Defendants statement at subparagraph 2a and states that:-
  - a. He spent more time in the hospital than any of his contemporaries or colleagues;
  - b. He was always aware of patient information;
  - c. He was always available for consultations with staff, nurses, fellow doctors, patients and their families and did rounds daily with the nurses and junior doctors; the traditional style of morning ward rounds is perfunctory, ineffective and did not achieve the desire/intended goals and as such no longer practiced;
  - d. He lived in close proximity to the hospital so that he could always be available to patients; while working in the Intensive Care Unit he spent more man hours at the hospital;
  - e. There was no concerted or logical approach to mentoring of junior doctors at the hospital however he tried to develop a new fully focused rounds experience for junior doctors by teaching them problem solving, avoiding and dealing with complications and determining definitive diagnoses;

- f. He denies that he failed to communicate with the nursing and medical staff save that on one occasion that required his immediate intervention when he was required to respond he did not but later rendered a full report and the patient file fully highlighted with notes; that the Second Defendant never requested a meeting with the Plaintiff.
- g. The Second Defendant is not in a position to assess the Plaintiff's competence as a surgeon as he has never been in the operating theatre with the Plaintiff or worked on a patient with the Plaintiff; the Plaintiff is a very meticulous and thorough surgeon.
- h. He admits to having a single emotional outburst in a meeting of the Executive Management Committee which was the result of frustration at the discussion about utilizing and managing the operating theatre. The Plaintiff wished to accommodate the back log of public patients and suggested the use of the theatre on Saturdays and Sundays; he tried to make suggestions for changes and improvements to the theatre's use and he remains committed to being responsible and accountable to the public.
- i. The Second Defendant is not qualified to recommend or suggest that the Plaintiff is in need of "Psychiatric counselling"; the Second Defendant has never brought any of the matters complained of in the Defence to the Plaintiff's attention.
- j. The Second Defendant failed to comply with the established Disciplinary procedures of the First Defendant as the Plaintiff was never provided with any documents or notices of complaints, infractions, warnings or otherwise.
- k. The Second Defendant failed to provide an Annual Evaluation of the Plaintiff according to the First Defendant's policies and that if prescribed such deficiencies complained of ought to have been brought to his attention and that he should have been given an opportunity to respond/make the necessary improvements/adjustments.
- l. As Chief of Staff the Second Defendant failed or refused to so manage or run his department as a medical professional with administrative and surgical responsibilities; the Second Defendant failed to be responsible for the proper

running of the surgical unit at the said hospital and that he failed to be accountable and service the general public patients as is the mandate of the hospital; instead the Second Defendant preferred to displace public patients for his private patients.

m. The Second Defendant was under a duty to publish the said letter to Miss Catherine Weech, he was also under a duty to provide a truthful report of the Plaintiff's tenure at the hospital and not maliciously publish the stated falsehoods against the Plaintiff.

11. The Plaintiff also states that as to the words complained of the Defendants failed to advise him of the said concerns nor was he given the opportunity to answer the allegations made in the letter nor was an attempt made to contact the Plaintiff prior to the publication. He denies that he was unapproachable or unavailable for discussion. Additionally, he states that the publication of the letter prevented him from answering the same and he has been unable to put his side of the story.
12. The Plaintiff states that the letter complained of was published in an excessive and sensationalist style with the intention of preventing the Plaintiff from advancing in the medical profession and to reduce his standing in the minds of reasonable thinking members of society, namely his patients and medical colleagues. He further states that the allegations against him go far beyond merely refusing his transfer but are instead advanced as blunt statements of fact and are malicious as to intent.
13. The evidence in this matter was heard by way of Witness Statements with the Plaintiff relying on his Witness Statement filed July 5, 2017, Dr. Latoya Storr filed July 5, 2017, Dr. Frank Bartlett filed November 9, 2017 and Dr. Winston Forbes filed November 9, 2017. Ms. Catherine Weech gave viva voce evidence on October 31, 2017 and April 23, 2018 as she was subpoenaed. The Plaintiff was also given leave to expand on his evidence from the witness box. In support of the action the Plaintiff also relied on the Plaintiff's Bundle of Documents filed March 30, 2015, and the Plaintiff's Submissions dated December 5, 2018.
14. The Defendants' evidence was by way of Witness Statements with the Second Defendant relying on his Witness Statement filed June 19, 2017, Dr. Vincent Burton filed June 19, 2017, Anika Albury filed June 19, 2017 and Dr. Freeman Lockhart filed June 27, 2017. The Defendants also relied on their Bundle of Documents filed June 22, 2017 and a



Supplemental Bundle of Documents filed June 26, 2017. The Defendants relied on their Submissions that were undated and received on January 29, 2019.

15. The witnesses were cross-examined during the course of the trial.

### **The Law on Libel/Defamation**

16. Halsbury's Laws of England 4<sup>th</sup> Edition, Volume 28 "Libel and Slander", at paragraph 1, states: "If a defamatory statement is made in writing or printing or some other permanent form, the tort of libel is committed and the law presumes damage....The actions of libel and slander are thus private legal remedies, the object of which is to vindicate the plaintiff's reputation and to make reparation for the private injury done by the wrongful publication to a third person or persons of defamatory statements concerning the plaintiff."

17. In addition to the above a defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or can cause the plaintiff to be shunned or avoided or expose the plaintiff to hatred, contempt or ridicule or to convey an imputation on the plaintiff disparaging or injurious to him/her in his/her office, profession, calling, trade or business. See Halsbury's Laws of England 4<sup>th</sup> Edition, Volume 28, para 10.

18. Further, a person's reputation is not confined simply to his/her general character and standing but extends to his/her trade, business or profession and words will be defamatory if they impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity. See Halsbury's Laws of England 4<sup>th</sup> Edition, Volume 28, para 42.

19. Counsel for the Plaintiff helpfully referred the Court to the case of **Cambridge v Lockhart [2012] 1 BHS J. No. 24** where then Justice Neville Adderley set out at paragraphs 38 to 40 the law applicable to libel in the Bahamas. He states:-

"38. The law applicable to libel in the Bahamas is essentially the common law. The plaintiff must prove

i) That the words are defamatory

- ii) That they refer to the plaintiff
- iii) That they were published to at least one person other than the plaintiff.

**39** A defamatory statement has variously been described in the case law as one "that lowers the plaintiff in the estimation of right thinking members of society" [Diplock J in *Silken v Beaverbrook. Newspapers Ltd* 1958 IWL R [743, 746] or "which causes others to shun or avoid the plaintiff" or which "tends to expose the plaintiff to hatred, contempt or ridicule". As stated by Lord Reid in *Lewis v Daily Telegraph Ltd.*[1963] 2 ALL ER 151 the statement must be viewed through the eyes of the ordinary man. He said this at page 154:

"There is no doubt that in actions for libel the question is what the words convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by the knowledge of the rules of construction. So he does read between the lines in light of his general knowledge and experience of worldly affairs."

**40** Halsbury's Laws of England third edition at page 2 provides the following passage on libel:

**"1. Actions of libel and slander.** In English law, speaking generally, every man is entitled to his good name and to the esteem in which he is held by others, and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person or persons without lawful justification or excuse.

If such a defamatory statement is made in writing or printing or some other permanent form the tort of libel is committed and the law presumes damage. If the defamation is oral, or in some other transient form, it constitutes the tort of slander which is not actionable without proof of actual damage, except where the statement is one of a particular character.

The actions of libel and slander are thus private legal remedies, the object of which is to make reparation for the private injury done by the wrongful publication to a third person or persons of defamatory statements concerning the plaintiff. The defendant in these actions may prove the truth of the defamatory matter and thus show that the plaintiff has

received no injury. For though there may be damage accruing from the publication, yet, if the facts published are true, the law give no remedy by action."

20. Additionally, Justice Adderley also canvassed the principles relating to the defence of qualified privilege in a libel action at paragraphs 41 to 42. He states:-

"**41** The principle relating to the qualified privilege is set out in *Watt v Longsdon* [1930] K.B. 130 (C.A) where Stelton LJ at page 142

"By the law of England there are occasions on which a person may make defamatory statements about another which are untrue without incurring any legal liability for his statements. These occasions are call privileged occasions. A reason frequently given for this privilege is that the allegation that the speaker has "unlawfully and maliciously published," is displaced by proof that the speaker had either a duty or an interest to publish, and that this duty or interest confers the privilege. But communication made on these occasions may lose their privilege: (1.) they may exceed the privilege of the occasion by going beyond the limits of the duty or interest, or (2.) they may be published with express malice, so that the occasion is not being legitimately used, but abused."

**42** He then at page 14 quoted from the well known case of *Adam v. Ward* (1917) AC 309 which sets out the two conditions which must be presented for the defendant to rely on qualified privilege: At page 147 he states this:

"Lord Atkinson in *Adam v. Ward* expresses it thus: "It was not disputed, in this case on either side, that a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a 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 so made has a corresponding interest or duty to receive it. This reciprocity is essential."

21. The defence of justification becomes available to a defendant if the words complained of were true in substance and fact and that the burden on the Defendant is to prove that the defamatory statements of fact are true or substantially true. See Halsbury's 4<sup>th</sup> Edition, Vol. 28, para 81.

## **Issues**

22. Therefore, considering the applicable law on an action for libel and the defences of qualified privilege and justification, the primary issues to be determined in this action are:-
- a. whether the words used were defamatory of the Plaintiff;
  - b. whether and if so how the words had been published;
  - c. whether the publication of the defamatory matter was defensible on the ground of qualified privilege;
  - d. whether the Second Defendant held an honest belief in his views expressed in the said letter; and
  - e. whether the Plaintiff is entitled to damages.

## **Statement of Facts**

### **The Letter**

23. For ease of reference the contents of the said letter is now set below:-

"6<sup>th</sup> June, 2013

Ms. Catherine Weech  
Hospital Administrator  
Grand Bahama Health Services  
Freeport, Grand Bahama

Dear Ms. Weech:

### **Re: Dr. Theodore Ferguson**

I am aware Dr. Theodore Ferguson had written a request to transfer back to Prince Margaret Hospital effective 1<sup>st</sup> June, 2013.

This matter was discussed at E.M.C. but a formal position was not take collectively or a recommendation to the Managing Director made for further action.

I wish to state categorically my opinion on this matter.

1. Dr. Theodore Ferguson did not discuss his request for transfer with me.

2. Dr. Ferguson has consistently demonstrated unprofessional behavior as a Senior Physician namely:
  - a. Failure to adhere to the Dress Code of the Public Hospitals Authority
  - b. Failure to perform consistent Consultant/Team Ward Rounds
  - c. Failure to communicate effectively with his Nursing and Physician colleagues
  - d. Failure to recognize his surgical competencies by operating on complex cases he has no demonstrable experience in performing
  - e. Failure to demonstrate good clinical judgment
  - f. Failure to display a professional demeanor in the workplace
  - g. Failure to show emotional stability especially in times of work stress – *e.g. emotional outbursts, shouting, inappropriate statements*
  - h. Failure to show respect for authority

I am very disappointed with this physician's overall behavior and performance at the Rand Memorial Hospital. Despite the fact that Dr. Ferguson has advanced the Endoscopy Services and assisted in patient care in the Intensive Care Unit, his overall performance does not meet the expected standards of a consultant within the Public Hospitals Authority.

Additionally, Dr. Ferguson is presently Away Without Leave (AWOL). No leave request has been submitted to the Medical Chief of Staff office to date. He last reported to work on Saturday, 1<sup>st</sup> June, 2013. The consequences of these unacceptable behaviors should be dealt with in accordance with the Medical Byelaws. I will also suggest this physician can perhaps benefit from Psychiatric counseling.

Yours sincerely,

Dr. Paul H. Ward DM, FRCOG

Medical Chief of Staff – GBHS

PW/aw

c: EMC – GBHS  
Managing Director – PHA  
Chairman of Medical Affairs – PHA  
Medical Advisor – PHA  
Chief of Surgery – PMH

## Medical Chief of Staff – PMH”

24. The Plaintiff alleges that the contents of the said letter are defamatory whereas the Defendants have alleged that the contents of the letter are not defamatory and even if they are it is covered by the defences of qualified privilege and an honest belief in the truth.

### **Analysis**

#### **Whether the Words Used Were Defamatory**

25. As I understand the pleaded case the Plaintiff contends that the words contained in the said letter, published by the Second Defendant are defamatory of the Plaintiff. The Plaintiff pleads that in their natural and ordinary meaning the said words meant and were understood to mean that the Plaintiff was insubordinate, had no respect for authority or established protocol, could not get along with his colleagues, was not a team player, was unprofessional in his demeanour and dress, provided unsatisfactory health care and endangered the life of his patients. The contents or words of the said letter to which the Plaintiff alleges are defamatory are dissected as follows.

#### **“1. Dr. Theodore Ferguson did not discuss his request for transfer with me”**

26. The evidence that was adduced before the Court by both sides is that the Plaintiff did not discuss his transfer request with the Second Defendant.
27. The Plaintiff’s evidence was that notice of his request for transfer to return to the surgery department of PMH was served in early March 2013 by way of a letter dated March 11, 2013 and addressed to Dr. Charles Johnson, Chairman of the Surgery Department at PMH (found at Tab 12 in the Plaintiff’s Bundle of Documents). He states in the letter that this communication serves as a formal request for re-joining the surgical personnel at PMH in the capacity of Consultant Surgeon. The letter of “transfer” appears to have been carbon copied to several individuals, namely, Dr. Perry Gomez, Minister of Health; Mr. Herbert Brown, Managing Director of PHA; Dr. Glen Beneby, Medical Advisor, PHA; Mrs. Dorothy Hepburn, Acting Chief Hospital Administrator, PMH, Dr. Geoffrey Pennerman, Medical Chief of Staff, PMH; Miss Catherine Weech, Chief Hospital Administrator, RMH; Dr. Paul Ward, Medical Chief of Staff, RMH; Dr. Freeman Lockhart, Chairman of Surgery Department;

RMH. He states that he sent this letter of request for transfer to the Second Defendant by way of being carbon copied and that he never received an acknowledgement or response to his transfer request; neither a call for discussion. He also stated that he was not aware that the Second Defendant's Administration Assistant had attempted to locate him on numerous occasions.

28. The Second Defendant's evidence was that the Plaintiff did not discuss his transfer request to PMH with him and that he became aware of the request based on receipt of the carbon copy letter addressed to Dr. Charles Johnson (referred to above). He also states that he was aware that the Plaintiff wished to transfer to PMH and that there were numerous attempts to contact the Plaintiff to have a discussion. This evidence was provided by the Second Defendant's witness, Ms. Anika Albury, then Administrator Assistant of the Second Defendant. Her evidence in part was that she made many attempts to contact the Plaintiff on behalf of the Second Defendant and had difficulties locating him on behalf of the Second Defendant; that she tried to reach the Plaintiff by using the office's telephone and leaving a message to contact the Medical Chief of Staff office. She also stated that it was possible that she may have missed the Plaintiff's return call as she was very busy however she was able to reach him once or twice but her difficulty in contacting him was because he was a very busy doctor at the hospital.
29. Counsel for the Plaintiff, Mrs. Ruth Bowe-Darville has submitted that the Second Defendant was not justified in writing those words and that the test is whether the words are the truth or not and the words must be taken in full context and must tell the whole story.
30. Counsel for the Second Defendant, Mr. Kirkland Mackey has submitted that the statements made by the Second Defendant were true. He further submitted that it was admitted by the Plaintiff that he did not discuss his transfer to Nassau with the Second Defendant and the evidence adduced at trial showed that at no point did the Plaintiff discuss the same with the Second Defendant.
31. I accept Mr. Mackey's submission and therefore find that the statement does not amount to a defamatory statement when considering the ordinary and natural meaning of the words contained in the statement and even if the words themselves could be deemed as defamatory, the defence of justification/truth would be available to the Second Defendant

as the evidence demonstrated that the Plaintiff did not discuss his request for transfer with the Second Defendant.

**“2.Dr. Ferguson has consistently demonstrated unprofessional behaviour as a Senior Physician namely:-**

- a. Failure to adhere to the Dress Code of the Public Hospitals Authority**
- b. Failure to perform consistent Consultant/Team Ward Rounds**
- c. Failure to communicate effectively with his Nursing and Physician colleagues**
- d. Failure to recognize his surgical competencies by operating on complex cases he has no demonstrable experience in performing**
- e. Failure to demonstrate good clinical judgment**
- f. Failure to display a professional demeanor in the workplace**
- g. Failure to show emotional stability especially in times of work stress – e.g. emotional outbursts, shouting, inappropriate statements**
- h. Failure to show respect for authority”**

32. As stated above in determining whether or not a statement is defamatory, the Court must consider what meaning the words convey. The Court looks to not only the literal meaning but the inferential meaning, i.e. the natural and ordinary meaning and what these words would convey to the ordinary man. See Halsburys 4<sup>th</sup> Edition, Volume 28, Libel and Slander, paras 43-45. Therefore, the Court should consider the natural and ordinary meaning of the entire statement that the Plaintiff has “consistently demonstrated unprofessional behaviour” and in particular, the word “unprofessional ” as contained in the “umbrella” statement above.

33. The word “unprofessional” is defined as:-



"not exhibiting a courteous, conscientious, or generally businesslike manner in the workplace : not professional" See Merriam-Webster Dictionary (<https://www.merriam-webster.com/dictionary/unprofessional>)

34. Additionally, synonyms of the word "unprofessional" include:
- "amateur, amateurish, inexperienced, inexpert, jackleg, non-professional, unskilled, unskillful". See. Merriam-Webster Dictionary supra
35. Considering the ordinary and natural meaning of the word "unprofessional" above it is not difficult to conclude especially considering the nature of the Plaintiff's profession, that the statement that the Plaintiff consistently demonstrated unprofessional behaviour as a Senior Physician is defamatory. Further, that the use of the word "unprofessional" imputed that there was a lack of qualification, knowledge, skill or capacity especially in the profession to which the Plaintiff and the Second Defendant belong to.
36. The Second Defendant in the said letter outlined the alleged behaviours which he determined amounted to unprofessional behaviour by the Plaintiff. Further, in considering the natural and ordinary meaning of the words stated by the Second Defendant found at paragraph 2 a-h, and used as examples of unprofessional behaviours on the part of the Plaintiff, I find that those words are defamatory.
37. The Second Defendant in the said letter also stated the below:-
- a. "Despite the fact that Dr. Ferguson has advanced the Endoscopy Services and assisted in patient care in the Intensive Care Unit, his overall performance does not meet the expected standards of a consultant within the Public Hospitals Authority."
  - b. "Additionally, Dr. Ferguson is presently Away Without Leave (AWOL). No leave request has been submitted to the Medical Chief of Staff office to date."
  - c. "I will also suggest that this physician can perhaps benefit from Psychiatric counseling."
38. As stated above in determining whether or not a statement is defamatory, the Court must consider what meaning the words convey and looks not only the literal meaning but the inferential meaning, i.e. the natural and ordinary meaning and what these words would

convey to the ordinary man. Additionally, the Court considers whether the statement is such that would lower a person in the estimation of right thinking members of society generally or can cause the plaintiff to be shunned or avoided or expose the plaintiff to hatred, contempt or ridicule or to convey an imputation on the plaintiff disparaging or injurious to him/her in his/her office, profession, calling, trade or business. Further, if the said words impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity.

39. Therefore, given the nature of the Plaintiff's profession, considering the natural and ordinary meaning of the words above and the probability that the said words impute lack of qualification, knowledge, skill, capacity, judgment or efficiency, I find that the said words contained in the said letter and indicated above are defamatory.

### **Whether and if so the words had been published?**

40. It is not disputed between the parties that the words in the said letter were published to the Hospital Administrator, Ms. Catherine Weech and carbon copied to the other individuals. However, the Defendants submit that the said letter essentially was a publication from itself to itself as the author and the recipients of the letter all are employed by PHA. The requirement is that the publication must be published to at least one other person other than the Plaintiff. The peculiarity of this action is that the Plaintiff was not an addressee of the letter nor was he carbon copied to receive a copy of the same. The Plaintiff was made aware of the letter after his return to Nassau in July 2013 during the monthly Consultant Surgeons meeting at PMH and discovered its contents after meeting with Ms. Weech in Freeport several days later. However, in the circumstances, the Court accepts that the said letter was published to the Plaintiff and Ms. Catherine Weech and others at the PHA.

### **Qualified Privilege/Justification**

#### **Submissions**

41. The Defendants have submitted that even if the content of the letter was false, in any event the letter was written on an occasion of qualified privilege. Mr. Mackey further submitted that in circumstances where an individual is under a legal, moral or social duty to communicate a defamatory matter to a party and that party has a corresponding

interest in receiving it, the common law confers qualified privilege on that statement. He refers the Court to **Toogood V. Spyring** (1834) 1 C.M. &R 181 at 193 and **Watt V Longsdon** [1930]1K.B 149 in support of his submission. It is his submission that the Second Defendant wrote the letter in response to concerns raised regarding the Plaintiff and under a sense of duty and without malice towards the Plaintiff and in the honest belief that the views therein made were true. He further submitted that Dr. Ward was a credible witness and in spite of rigorous cross examination from opposing counsel, Dr. Ward maintained his belief in the truth of what was he stated in the subject letter. It is also submitted that the Plaintiff's pleaded case pleads no facts or evidence from which the court could infer malice. Additionally, there was no evidence adduced at trial that supports the allegation that Dr. Ward was activated by malice when he wrote and forwarded the subject letter. It is also submitted that in spite of the Plaintiff's witnesses attempt to discredit Dr. Ward as Medical Chief of Staff, the Plaintiff's witnesses provided no details on any malice of the part of Dr. Ward. Lack of malice was evident in the subject letter written by Dr. Ward when in spite of his comments about Dr. Ferguson he acknowledged that Dr. Ferguson while at the Rand Memorial Hospital was responsible for advancing the Endoscopy Services and had assisted in patient care in the Intensive Care Unit. He refers to the cases of **Horrocks and Lowe** [1975] AC 135, 149H to I51B; **Seray-Wurie v Charity Commission of England and Wales, [2008] EWHC 870 (QB)**; **Webster vs. Gas Services Limited,[2003] EWHC 1188 (QB)** in support of his submission.

42. The Plaintiff in response to the Defendants defence of qualified privilege submitted that the Second Defendant was not justified in writing those words. That he acted on information/hearsay etc. and by his own admission he never observed or investigated the verbal complaints that he received. As such he had no firsthand knowledge of the Plaintiff's practice other than he may have seen him without a lab coat or wearing a tam, none of which was out of the ordinary. The test is whether the word is true or not. The words must be taken in full context and must tell the whole story. It is submitted by the Plaintiff that the words so written and published were malicious. It is obvious from the evidence given that the Second Defendant was intent on obstructing the Plaintiff's transfer because the Plaintiff by-passed him in making his application directly to the originating body. Further, the Second Defendant stated that he had no intention of invoking the by-laws, the disciplinary procedure or the employee manual when dealing with what he called

an offence. It is even more blatant that he failed to heed the advice of the Hospital Administrator or even that of Dr. Forbes to withdraw the letter and to pursue other avenues of dealing with the Plaintiff. She further submitted that while the factual matrix was that of qualified privilege the deliberate intention to bring the Plaintiff into disrepute; to harm him in his employment prospect (transfer) etc. will negate the qualification. She refers to the case of **Cambridge v Lockhart** and submits it is instructive. Lastly she submitted that the Defendants cannot rely on qualified privilege because the statements were made without the belief as to its truth, knowing it to be untrue or recklessly indifferent as to the truth or falsity of it or that the statement was advanced with improper motive.

43. The Defendants also submit that they have a complete defence if the Second Defendant can prove that the words complained of are true. Further, there is no burden on the Defendant to establish in this regard that the word is precisely true in every particular. The critical issue is whether it is substantially true. See **Turcu V News Group Newspapers Ltd [2005] EWHC 799** Therefore, they submit that that statements made by Dr. Paul Ward were true.
44. On the issue of damages, the Defendants submit in part that that the Plaintiff has not adduced any evidence to prove that he has incurred damages as result of the subject letter and that Dr. Ferguson continues as a Consultant Surgeon at the Public Hospital Authority. Further, the Defendants submit that the Plaintiff's own evidence alleges that it was known that the Plaintiff had a negative reputation among his peers in Nassau.
45. Counsel for the Plaintiff however submits that in this claim the Plaintiff does not have to prove his damages as libel is actionable per se.
46. The law on justification was hereinbefore-mentioned at paragraph 21.

## **The Evidence**

### **a. Failure to adhere to the Dress Code of the Public Hospitals Authority**

47. With respect to adherence to the dress code, the said letter fails to explicitly state what provision/section of the PHA's dress code the Plaintiff offended. However, in the Defendants Defence they plead that the PHA's Employee Handbook under Public Image/Dress Code was not adhered to and that the Industrial Agreement between the

PHA and the Bahamas Doctors Union provide a lab coat allowance and that the Plaintiff did not wear the prescribed lab coat. They also allege that the Plaintiff wore a black tam, jeans, t-shirt and no identification badge and wore his hair plaited and that he did not obtain permission to wear his black tam daily and his hair plaited.

48. The Plaintiff's evidence in part was that he never had his head uncovered within RMH except during his last few weeks where on exiting the premises he took off his tam; that he never wore a lab coat (which he called filthy) and that he was not aware that he received an annual allowance for the purchase of lab coats which initially was \$80.00 and increased to \$120.00. Additionally, he states that there is no policy with PHA that mentions it is mandatory to wear lab coats.
49. In addition to the Plaintiff's own evidence, Latoya Ebony Storr, a resident in Emergency Medicine and employed by the PHA gave evidence on behalf of the Plaintiff. Her evidence in part is that she worked directly under the Plaintiff in her surgical rotations; that she had no difficulty with the Plaintiff and his dress at work; that the wearing of neckties and lab coats in first world countries are trending down and that the Plaintiff was always dressed appropriately and ready at any time to perform when needed. She further stated that to her knowledge there is no dress code for Consultants save that they are clean and well-groomed and required to wear closed-in shoes during surgery. As it related to the Plaintiff's hair that he had dreadlocks but that he never appeared unkempt; always kept his head covered with a tam when in the hospital and that she never heard a patient or doctor complain or object to his mode of dress or hairstyle. In cross-examination she stated in part that she remembered receiving an allowance in the amount of \$80.00 and not \$120.00 for the purchase of lab coats to be worn however she was not aware of any policy of consultants having to wear lab coats as some persons do not wear them. She also stated that she was not aware of any occasion where the Second Defendant brought the issue of the Plaintiff having dreadlocks to the Plaintiff's attention.
50. Dr. Frank Bartlett, a medical doctor and the acting Head of the Department of Pediatrics at RMH also gave evidence on behalf of the Plaintiff. His evidence in part was that he did not have any problem with the dress or general appearance of the Plaintiff. In cross-examination he stated that a tam was not a fixture of the Plaintiff's dress code and that he could count on his hand the amount of times he saw the Plaintiff wearing a tam; that

he himself does not wear a lab coat and knows that the lab coat allowance is a part of the policy however the Human Resources policy has changed quite a bit within the PHA.

51. Dr. Winston Fitzgerald Forbes, a medical doctor and the Chief Internal Medicine Consultant at RMH also gave evidence on behalf of the Plaintiff. His evidence in part was that he saw no problem with the way the Plaintiff dressed on the job; that the dress code for medical professionals is constantly changing; that he never heard any patient complain about the Plaintiff's clothes or the way he looked. In cross-examination he also stated in part that the dress code for physicians has drastically changed as they no longer wear suits and ties as infectious diseases can latch on and spread; that some physicians are old school and continue to do so; that he does not recall whether he received lab coat allowances; that as Chief of Internal Medicine he is aware of the PHA's policy and procedure for dress code and that he wears his lab coat perhaps 80% of the time.
52. Ms. Catherine Weech, Hospital Administrator at the time also gave evidence on behalf of the Plaintiff. Her evidence in part was that there is a dress code and it speaks to footwear and being present and dressed neatly.
53. The Second Defendant's evidence in part was that the Plaintiff rarely wore a white lab coat; that he addressed the PHA dress code to all physicians present at one of the Friday CME meetings in which the Plaintiff was present; that the Plaintiff at that meeting took off his tam, shook his dreadlocks and asked him what was he going to do with him. In cross-examination he stated in part that the lab coat is all about tradition; that he addresses all the general medical staff about proper attire; that they have a mentoring process whereby junior doctors are looking up to senior doctors so the senior doctors have to dress appropriately; that the appropriate dress is whatever looks neat in appearance; that you do not have to wear a lab coat but you have to have permission to wear a hat as a physician in the PHA from the Managing Director.
54. Dr. Vincent Burton, employed as the Clinical Director of Anesthesiology and ICU with GBHS gave evidence on behalf of the Defendants. His evidence in part during cross-examination was that he himself does not wear a lab coat 100% of the time; that not wearing a lab coat is not a failure but he would instruct his team that the current dress code of PHA is to wear a lab coat with the name tag prominently displayed; that it is a failure to adhere

to the dress code and that such a failure to wear a lab coat would not affect someone's surgical ability.

## **Findings**

55. It was accepted by the witnesses for the Plaintiff and the Defendants that doctors wore lab coats but the evidence adduced by the Defendants fails to establish what the official dress code was and in what manner the said dress code had been offended by the Plaintiff. The Defendants have pleaded in their Defence that the dress code is contained in the PHA Employee Handbook: Public Image/Dress Code, but have failed to provide a copy of the said Handbook indicating the relevant section or provision relied upon by the Second Defendant in his defence of justification/truth. Additionally, the evidence adduced at trial, in particular the evidence of medical doctors who are subject to the same dress code was that in some instances they do not wear them for the varying reasons they provided. Further, the evidence of the Second Defendant during the trial on the issue of the lab coat was that the appropriate dress is whatever looks neat in appearance and that one does not have to wear a lab coat but written permission must be given by the Managing Director to wear a hat as a physician. Once again, no documentary evidence was provided by the Defendants in support of the Second Defendant's assertion that there was a requirement to obtain written permission to wear a hat.

### **b. Failure to perform consistent Consultant/Team Ward Rounds**

56. The Defendants in their Defence allege that the Plaintiff did not conduct doctor's rounds and instead came on the ward at his convenience, saw patients unaccompanied by a nurse or physician and would pass by the nurse's station to advise them of changes to the patient's management. They also allege that when his supervisor told him that that behaviour was unacceptable he replied that he was [not] doing doctors rounds because it was not standard practice where he was trained.
57. The Plaintiff's evidence, in part, was that he found the daily wards to be perfunctory, lasting 1 to 2 hours at most whereas the customary practice elsewhere such as Europe where he did his training was for the Consultant on call to be appraised regularly of the happenings during the call in period. He also stated that the practice at RMH was that the rounds would be morning ward rounds, usually a group huddled around the patient's bed;

that he refused to do ward rounds because he was constantly on the premises at RMH throughout the night and during the day; that he was approached by Dr. Lockhart and Dr. Klassen to participate and he responded that he would cease all responsibilities for the surgical patients in the ICU and only deal with the patients that came directly under his admission, call-duty and referral consultation; that after that proposition the issue was never brought up again.

58. Dr. Frank Bartlett's evidence in part was that the Plaintiff worked over and beyond the call of duty, completed his duties, interacted with junior staff, was seen at the hospital late into the evening and early mornings interacting with his patients and putting in more hours than most of his team. He also stated that the Plaintiff may not have participated in formal rounds but the junior staff received the training required.
59. Dr. Winston Forbes' evidence in part was that ward rounds are important to do follow-up care and that during the ward rounds the team goes from patient to patient to make sure their issues are being managed; that sometimes ward rounds may not be convenient for the other team so they may convene outside of the usual time but it happens when needed.
60. The Second Defendant's evidence in part was that there was a concern that the Plaintiff did not join his team and do ward rounds as ward rounds are very important.
61. Dr. Freeman Lockhart's evidence in part was that the Plaintiff never participated in the daily rounds that are attended by all doctors at RMH in the surgery department; that daily ward rounds are necessary as it is an opportunity for doctors to meet with and discuss patients treatment and other patient care information as a team; they also give junior doctors an opportunity to learn from senior doctors; and to ensure and validate that patient care is a team effort. He also stated that the Plaintiff instead saw patients at his convenience which was usually during afternoon and evening hours; that he discussed this with the Plaintiff and was told by the Plaintiff that ward rounds were not standard practice where he trained in Europe and elected to implement his own ward rounds. In cross-examination he stated in part that the Plaintiff initially attended a few ward rounds and then discontinued; that the team gets together to do ward rounds and it is scheduled to be in the mornings; that the Plaintiff did see his patients and that the specific morning



time to do rounds was not a part of the Plaintiff's standard of practice and training. In re-examination he stated in part that the ward rounds are usually done first thing in the morning as that is the most convenient time for the entire team to assemble, walk around, see new patients who were operated on the day before and is done in a group.

## **Findings**

62. The evidence of the witnesses above and in particular the Plaintiff was that, the Plaintiff, while initially participating in the ward rounds, refused to participate and continue the same as it was not the practice done where he had trained. As I understand the process of the ward rounds it is usually done in the morning as that is the most convenient time. The evidence also was that although he did not perform the usual morning rounds, he did still see his patients. However, the Plaintiff's own evidence of his refusal to participate in the morning ward rounds; that he voiced his refusal to do so to his immediate supervisor and it was subsequently made known to the Second Defendant I find allows the Second Defendant to rely on the defence of justification or truth as it relates to this allegation.

### **c. Failure to communicate effectively with his nursing and physician colleagues**

63. The Defendants in their Defence allege that the Plaintiff ineffectively communicated with both nursing and physician staff by discharging patients without informing the ward's nursing staff who is responsible for discharging process; that the Plaintiff's documentation in patient notes was inadequate so the physician and nursing staff was unaware of his medical orders; that the Plaintiff did not respond to written requests for explanations about patient related incidents; that the Plaintiff ignored written and oral requests for meetings with the Second Defendant; that the Plaintiff did not communicate appropriately with RMH physician hierarchy.

64. The Plaintiff's evidence in part was that he took responsibility as he was the consultant responsible for the patient following an incident whereby a patient was discharged but still had a central line in his shoulder following surgery; that he was not present when the patient was discharged after surgery but he took responsibility for the failure to take it out; that there was another incident whereby he had prepared a patient for surgery, sent the referral letter to Dr. Burton and the proposal for surgery only to discover the night

before the surgery that it could not be done. He states that he did not find out directly from Dr. Burton (another consultant) that the surgery could not be done and his issue was that no one communicated that information directly to him. He also states that in response to an incident report (found at Tab 4 of Defendants' Bundle of Documents) regarding the incident above during the trial was his first time seeing the incident report, that there was a letter requesting he provide a report but that he did not provide the report.

65. Latoya Storr's evidence in part was that the nurses at RMH loved the Plaintiff, especially in ICU; that they found him easy to talk to, that he taught them new medicine and techniques that they would not have received from other doctors; that he did not have any problems with the nursing staff and even assisted in their further training. In cross-examination she stated that she did not provide to the Court the names and statements of the nurses to which she testified the Plaintiff showed new techniques to.
66. The Second Defendant's evidence in part was that he had requested the Plaintiff to write a report for the EMC regarding patient care at RMH following an incident and the Plaintiff informed Dr. Lockhart that he was not at fault so he was not writing a report. He also states that following an incident whereby a central line had remained in a patient's shoulder following surgery that he attempted to reach the Plaintiff to write a report on the same but that the Plaintiff never responded or refused to respond. He further states that there was another incident whereby a patient's surgery was cancelled and the other doctors involved Dr. Burton and Professor Panditrao provided reports of the same but that the Plaintiff failed to provide any report.
67. Dr. Vincent Burton's evidence in part was that there was an incident during an operation whereby the Plaintiff had instructed a nurse to administer fluids instead of the two anesthesiologists as it is their job to do so and that when he questioned the Plaintiff for his reason for the instruction he responded that that was his patient. He also stated that after that incident he and the Plaintiff's relationship was strained; that sometimes there was a breakdown in communication between himself and the Plaintiff such as he advising that the patient was not a good fit for surgery and the Plaintiff responding that he only stated that because he did not think the Plaintiff was good (enough) to operate on the patient.

## Findings

68. The Defendants in their Defence plead the ways in which the Plaintiff failed to effectively communicate with the nursing and physician staff, such as discharging patients without informing the nursing staff; that the Plaintiff's documentation in patient's notes was inadequate; that the Plaintiff did not respond to written requests for explanation about patient related incidents in which he was involved and another in which he was not involved; that the Plaintiff ignored written and oral requests for meetings with the Second Defendant. The evidence of the witnesses however, do not speak to any events relating to the inadequacy of the Plaintiff's documentation in patients notes. I accept that the evidence established that the Plaintiff did not provide the requested reports for both incidents but in the case of the patient discharged with the central line the Plaintiff from his evidence which was not contradicted took responsibility at the time of the incident for the error. The evidence during the trial also showed that a physician does not have to be present on the discharge of every patient. It was not disputed by the Defendants that the patient involved in the second incident was not the Plaintiff's patient so his not having provided a report was reasonable in the circumstances. While the pleadings in the Defence state that the Plaintiff ignored written and oral request for meetings with the Second Defendant, the evidence showed that attempts were made to locate and speak with the Plaintiff without success and that the Plaintiff was not aware that the Second Defendant's Administrator Assistant had tried to locate him on many occasions. I also accept that the Plaintiff and Dr. Burton had a difference of opinion as to who should administer fluids in an operation but I think it fair to say that physicians will have differences of opinion as stated by Dr. Winston Forbes in his evidence. From the totality of the Defendants evidence I do not accept that the same amounts to a failure on the part of the Plaintiff to effectively communicate with his nursing and physician colleagues.

**d. Failure to recognize his surgical competencies by operating on complex cases he has no demonstrable experience in performing**

**e. Failure to demonstrate good clinical judgment**

69. The Defendants in their Defence allege that the Plaintiff took on cases that were beyond his level of competence in that environment; that the Plaintiff did not accept or encourage

advice; that the Plaintiff took an inordinately long time with some simple surgical cases; that the Plaintiff frequently re-operated on patients demonstrating that the initial surgery may not have been done properly.

70. The Plaintiff's evidence in part was that he performed a vast gamut of surgical procedures while at RMH, in Nassau and in the Cayman Islands; that he had an evaluation of his work performance done at PMH between 2003 and 2013; that he never had an evaluation done at RMH and that the Second Defendant had not done one of him. The Plaintiff also gave evidence of numerous incidents whereby he displayed or demonstrated his capabilities; that there has never been an occasion where the Second Defendant had cause or reason to be present within the same operating theatre whilst performing surgery; nor was the Second Defendant present when he conducted ward rounds, or conducted or communicated orders to staff such as physicians, nursing, clerical and ancillary employees within RMH. In cross-examination he accepts that a number of his colleagues were complaining that he was practicing dangerous one man medicine. In re-examination he stated that the Second Defendant never brought to his attention the matters complained of in the letter during the course of his employment nor brought to his attention by Dr. Lockhart; that he was not aware of any evaluation done of him by the Second Defendant nor Dr. Lockhart.
71. Latoya Storr's evidence in part was that to the best of her knowledge she thought the Plaintiff was surgically competent and knew his limits; that the Plaintiff always acted on his own clinical judgment even though at the time she did not possess the level or skill or experience as the Plaintiff, she just observed.
72. Dr. Frank Bartlett's evidence in part was that he was not aware of any factual evidence of failed surgeries, morbidities or mortalities on which the Second Defendant formed the basis of his allegations. He also stated that to the best of his knowledge no surgical audit was done of the Plaintiff's surgeries. In re-examination he stated in part that part of the issue is that nobody documents or trends and so when the issue gets to the disciplinary committee nothing can be done due to lack of documentation.
73. Dr. Winston Forbes' evidence in part was that he fully appreciated the Plaintiff's surgical competencies as he acquired the same over time; that he and the Plaintiff co-managed

patients in the ICU; that the Plaintiff demonstrated good clinical judgment and when others clinical judgment failed the Plaintiff would step in and champion the cause.

74. Ms. Catherine Weech's evidence in part was that the administration of the hospital did not have any problems with the Plaintiff and his professional demeanour and manner and performance at the hospital.
75. The Second Defendant's evidence in part was that there were reports that the Plaintiff failed to recognize his surgical competencies by operating on complex cases that he had no demonstrated experience in performing; that his opinion on this view was gathered from informal discussions with anesthesia services; that the impression given to him was that the Plaintiff's clinical strengths were in endoscopy and assisting with managing critical care ICU patients; that he requested peer review of two cases operated on by the Plaintiff. He further states that his opinion of the Plaintiff's failure to demonstrate good clinical judgment stems from the confidential opinion of his anesthetist colleagues who expressed concerns with him from time to time regarding his operating theatre skills and the same is documented in the Medical Advisory Committee Minutes. In cross-examination he stated in part that he and the Plaintiff rarely crossed paths as the Plaintiff worked in the Department of Surgery and he worked in Obstetrics and Gynecology; that he never operated with the Plaintiff; that he never had an opportunity to observe the Plaintiff's competence but as Medical Chief of Staff it was his duty to get feedback from all his senior colleagues, his duty to ensure quality assurance and how patients are treated, his duty to ensure safety is assured in the hospital, his duty to ensure interpersonal relationships are harmonized. He further stated that it is impossible as Medical Chief of Staff to observe individually every doctor hence the reason for consultants; that the complaints in the letter are the truth; that he did not take it upon himself to observe and make inquiries for himself. He also stated that he did not think it was appropriate to observe the Plaintiff after receiving the verbal reports; that he thought about auditing the Plaintiff's surgeries. In re-examination he stated that doctors are reluctant to put things in writing as they do not want to harm a person's career or practice; that as Chief of Staff he is not supposed to go and watch a consultant, they are certified doctors and are supposed to know their skill; that the best assessment of a surgeon is another surgeon.

76. Dr. Vincent Burton's evidence in part was that he was aware of a number of concerns raised by himself and others about the performance and manner in which the Plaintiff carried out his surgical duties at RMH; that during a particular incident the Plaintiff operated outside of the standard universal operation procedure; that there were concerns among the consultants regarding the choice of cases chosen by the Plaintiff and the extra-long time it took for the Plaintiff to perform surgery on those cases. During cross-examination he stated that he never produced his concerns about the Plaintiff in writing; that he had discussions with the Chief of Staff and the other surgeon who was present during a previous incident; that he thought it best to have a discussion about it rather than write as a letter could cause trouble. He also stated that because he was in the theatre with the Plaintiff he was able to observe the Plaintiff's surgeries; that an anesthetist can address the competencies of a surgeon and that failure to demonstrate clinical judgment would come before him.
77. Dr. Lockhart's evidence in part was that it was also observed that the Plaintiff took longer than what is expected; that he discussed the same with the Plaintiff suggesting that he could request assistance when necessary from a senior physician when dealing with complex cases. In cross-examination he stated that his counterparts in anesthesia observed different surgeons performing similar cases and that was how they came up with a measured expectation; that he never assisted the Plaintiff; that it was not his observation; that he never had any reason to audit the Plaintiff; that an audit was never done.

## **Findings**

78. As stated in paragraph 18 above, the allegations of failing to recognize his surgical competencies and failing to demonstrate good clinical judgment speak to more than just his reputation but also seeks to impute a lack of skill, qualification, knowledge, skill, capacity, judgment of efficiency. Therefore, having considered the evidence of the witnesses for the parties above and in particular, the evidence of the Plaintiff and the Second Defendant, the Second Defendant's allegations contained at d and f of the said letter, when considered in light of their natural and ordinary meaning in the stated contest of being "unprofessional behaviour" I am compelled to find that the said allegations are defamatory. Moreover, I find that the Second Defendant cannot rely on

justification/truth as the evidence before the Court was that the complaints were made by others and are hearsay, that he never investigated the said complaints, that he never observed the Plaintiff during his surgeries nor during his duties, nor observe his competencies, and that he did not conduct any audit of the Plaintiff's surgeries. The Second Defendant, Dr. Burton and Dr. Lockhart all stated in evidence that doctors prefer not to criticize their colleagues in writing. Dr. Burton and Dr. Lockhart did not give any evidence of any specific patient or any specific incident in writing and in short none of their observations/concerns about the Plaintiff's questionable surgical skill was ever documented and so there is no proof of such lack of surgical competency. The same applies for the allegation of the Plaintiff's lack of good clinical judgment.

**f. Failure to display a professional demeanor in the workplace**

79. The Defendants allege in their Defence that the Plaintiff was unwilling to assist with supervising medical staff in accordance with his job description and that he failed to demonstrate professionalism by the manner in which he dressed.

**Findings**

80. The Court in paragraphs 47 to 55 above addressed-the nature of the Plaintiff's dress i.e. wearing a tam, not wearing a lab coat and determined that the Second Defendant's allegation that failing to adhere to the dress code was unprofessional was defamatory. I find that the Second Defendant could not rely on the defence of justification/truth as at the time of writing the said letter he did not hold an honest belief that the failure to adhere to the alleged dress code was unprofessional. The Court in the same manner also finds that the Second Defendant cannot rely on the defence of justification/truth as at the time of writing the said letter he did not hold an honest belief as it relates to the allegation that the Plaintiff failed to demonstrate professionalism by the manner in which he dressed. The evidence before the Court from numerous witnesses was that as far as they were aware the Plaintiff never received any complaints from staff nor patients or that staff or patients had an issue with his dress or that it prevented him from doing his job.

81. Additionally, as to his alleged unwillingness to assist in supervising the medical staff in accordance with his job description, the evidence from the all of the physicians who testified bore out that while the Plaintiff and other physicians may have had disagreements

or opposed opinions, they managed to work out their issues in the best interest of the patient. Moreover, the evidence on behalf of the Defendants adduced at trial I find did not show that the Plaintiff was unwilling to assist with supervising medical staff in accordance with his job description. If anything, the evidence adduced showed that in spite of differing views or opinions, the medical staff, inclusive of the Plaintiff, were able to resolve their issues and continue with patient care. Dr. Latoya Storr in her evidence spoke to the seemingly high regard that the staff had for the Plaintiff and the fact that he taught them new techniques. Save for asking for the names of the nurses the Plaintiff taught new techniques to, her evidence was not controverted. Additionally, I find that the evidence adduced at trial by the Defendants failed to demonstrate the ways in which the Plaintiff was unwilling to assist in supervising medical staff in accordance with his job description. Therefore, I find that the Second Defendant cannot rely on the defence of justification/truth as there was no evidence adduced in support which would have led the Second Defendant to hold an honest belief that the Plaintiff failed to display a professional demeanour in the workplace.

**g. Failure to show emotional stability especially in times of work stress  
e.g. emotional outbursts, shouting, inappropriate statements**

82. The Plaintiff in his reply admits that he had a single emotional outburst in a meeting of the Executive Management Committee which was the result of frustration at the discussion about utilizing and managing the operating theatre. He stated that he wished to accommodate the back log of public patients and suggested the use of the theatre on Saturdays and Sundays; he tried to make suggestions for changes and improvements to the theatre's use and he remains committed to being responsible and accountable to the public.
83. Dr. Latoya Storr's evidence in part was that the Plaintiff bucked heads with the other physicians but this was not peculiar to him alone as surgeons and anesthesiologists often have spirited conversations on the need and timing of procedures; that in her experience there is hardly a surgeon who does not get upset, get angry or shout; all surgeons have quirks; that the outbursts were usually justified, never frequent or persistent, they were emotional and came out of frustration. During cross-examination she agreed that she observed the Plaintiff scream and yell in the hospital setting but that he was not the only



surgeon to do that; that in her training she was taught not to behave herself in such a manner and that his outbursts were never in front of patients.

84. Dr. Frank Bartlett's evidence in part was that the Plaintiff did have "outbursts" but that they were usually justified. During cross-examination he stated in part that he used the word "outburst" because of his interaction with the Plaintiff while he was Medical Chief of Staff and had to intervene in situations where the Plaintiff was frustrated; that in all of those cases the Plaintiff had a valid reason for being upset or frustrated.

85. Dr. Winston Forbes' evidence in part was that there were times when there were justifiable issues that led to the Plaintiff becoming upset and the Plaintiff was certain to speak to it; that the Plaintiff was outspoken and did not mince words; that the Plaintiff maintained a distinct professional demeanour, that if annoyed in any way he would react; that some of the Plaintiff's responses were justified but never unprofessional; that if the Plaintiff were less emotional his responses could have been tempered.

86. Dr. Ward's evidence in part was that the Plaintiff's failure to show emotional stability was shown in an incident where in the presence of the Administration in one of the Operating Room Committee Meetings the Plaintiff was loud and made inappropriate statements.

87. Dr. Vincent Burton's evidence in part was that in several meetings with the Plaintiff he had cursing spells in the presence of the hospital administrator and the Medical Chief of Staff.

### **Findings**

88. Having determined the statement in paragraph g to be defamatory, once again the Court will examine whether the Second Defendant held an honest belief at the time of writing the letter that the Plaintiff was emotionally unstable. The Plaintiff in his Reply admitted to one single emotional outburst during an EMC meeting which was the result of frustration at the discussion about utilizing and managing the operating theatre. The Second Defendant and Dr. Burton used this one incident to support the allegation made by the Second Defendant in the letter. On the other hand Doctors Storr, Bartlett and Forbes basically characterized all surgeons as prone to getting upset, getting angry, shouting, having outbursts but justifiably so because "they" were emotional and often borne from frustration. They all stated that the Plaintiff had outbursts but that the same were usually justified. Dr. Forbes went so far as to say the Plaintiff's responses were never

unprofessional. An outburst at one meeting is not to my mind evidence of emotional instability.

**h. Failure to show respect for authority**

89. The Defendants plead that the Plaintiff's disregard for authority was demonstrated by the manner in which the Plaintiff effected his transfer from RMH; that he ignored the Medical Staff Advisor's request for information regarding patient related incidents involving him and that the Medical Staff Advisor requested the Plaintiff attend meetings to discuss outstanding matters.

90. The Plaintiff's evidence in part as it relates to his transfer from RMH was that notice of his request to return to the surgery department of PMH was served early March 2013, shortly thereafter there were brief meetings held with Ms. Catherine Weech and Dr. Charles Johnson, Chief of Surgery of PMH, where he explained his reasons for requesting the transfer. That written communication was forwarded at the same time to the Chief of Medical Staff at RMH and Administrative Head of Surgery Department at RMH both who never acknowledged or responded to the transfer request, that he never received a call for discussion from either, the only acknowledgement came from the HR Department at RMH on behalf of Hospital Administrator's Office. That upon securing the transfer request and verbally given leave by Ms. Weech he reported for duty at PMH at the beginning of July 2013 at the conclusion of his vacation leave period. That Ms. Weech informed him directly that the official paper documentation had not been completed but the negotiations by the administrative-personnel management had been concluded approving his transfer; that the official documentation would follow. In cross-examination he stated in part that that Ms. Weech verbally gave him vacation leave upon securing his transfer request. He stated that his last date of duty was May 31 and the following day he began his 4 weeks' vacation leave and then reported on July 1 for duty at PMH; that he made a request for that 4 week leave; that the approval of his transfer to the surgery department was also verbal by Ms. Weech; he had no documentation to show that. He further stated that he is familiar with the transfer form used; that he sent a letter to the Second Defendant requesting to be transferred which was the letter sent to Dr. Charles Johnson at PMH (the Second Defendant was cc'd on it). That he recalls filling out a transfer request form; that it was sent to the surgery department at PMH and subsequently to Ms. Weech; that he

did not give the form to the Second Defendant or Dr. Lockhart; that the copy sent to Nassau did not have Dr. Lockhart's signature. He stated that to date he received a letter telling him that his transfer is done but it is not exhibited in any of the bundles. During re-examination he stated in part that he acted on Ms. Weech's instructions at all times.

91. Ms. Weech's evidence in part was that the Plaintiff asked for a transfer. In the case of the Plaintiff he was to go to her department on the transfer and his request for return was addressed to the Second Defendant, it may have been addressed to the Second Defendant or addressed directly to the Medical Chief of Staff PMH. Further, that the Plaintiff's move from Nassau to Freeport was a lateral move, when they were in a time of need, needed support for Department of Surgery; that it was a dual relationship in the sense that he was transferred, on assignment at the Rand, protocol would require him to communicate through Medical Chief of Staff at the Rand. She stated that she was carbon copied on the March 11, 2013 letter to Dr. Charles Johnson from the Plaintiff requesting the transfer; that the response letter dated April 5, 2013 was forwarded to corporate office and to PMH for approval, it was never sent back to RMH. Additionally, that it is her opinion that the Plaintiff did not go on leave without permission and that the Second Defendant was apprised of the movements concerning the Plaintiff; that as Hospital Administrator she did her due diligence along with the help of HR; that the Second Defendant was kept abreast of all of the happenings. She stated that from her point of view she does know that the issue of transfer for the Plaintiff was brought up in numerous EMC meetings and herself along with HR were in constant communication with PMH to facilitate the request for transfer. During cross-examination she agreed that the document at Tab 1 of the Defendant's Supplemental Bundle of Documents shows the policy in respect of transfer for all employees; that she thinks the Plaintiff's request for transfer was written; that she was also aware that there was verbal communication between Dr. Lockhart, the Second Defendant hence her becoming involved in the information around the EMC table. She also stated that it would surprise her to know that there was no written direct communication sent to Dr. Lockhart because to her knowledge the information was brought to the EMC by the Second Defendant following a number of conversations that they were made aware of and formally tabled at the EMC; that the application for leave makes provision for the signatures for the Department Head and Chief of Staff; that she did not have a copy of the leave form that was sent to Nassau; that she did not recall a

form being signed and sent to Nassau. She stated that item 2 in her letter indicated that the Plaintiff did make application for leave and regrettably the applications were sent to PMH; that when the situation regarding the Plaintiff and his request to transfer to Nassau arose she did take the opportunity to indicate to the Second Defendant that the issues he was bringing up were issues that he should meet with the Plaintiff and discuss. Further, that on one or two occasions she indicated to the Plaintiff to meet with the Second Defendant with respect to his request to transfer to Nassau; that she probably did refer the Plaintiff to Dr. Lockhart and the Second Defendant when he approached her about his request to transfer, that she inquired what could they do here in Freeport to make him change his mind because they needed his services in Freeport. However, she stated that she did not give the Plaintiff verbal permission to leave, that she could not give verbal approval; that in the circumstances if one has made a decision to go her response would have been she could not prevent him from going but unless it is in writing it is not official. Lastly, that it was the case at the time when she wrote the letter that she received all leave forms of the Plaintiff and she received verbal notification from PMH of his acceptance.

92. The Second Defendant's evidence in part was that the Plaintiff wrote on March 27, 2013 to Dr. Charles Johnson to request transfer to PMH effective June 1, 2013. Ms. Shawn Mader (HR Manager) wrote to the Plaintiff informing him that his written request for transfer was forwarded to the Corporate Office for approval April 5, 2013. Ms. Mader wrote the Acting Administrator at PMH about the Plaintiff's request for transfer to PMH effective June 1, 2013 and (on) April 5, 2013. Ms. Dorothy Pratt (Manager I) Corporate Office wrote the Acting Administrator at PMH informing her of the Plaintiff's request for transfer to PMH and a request was also made if PMH could accommodate his salary. Ms. Denise Butler-Brown (Acting HR Manager PMH) wrote the Hospital Administrator at RMH by letter dated June 22, 2013 requesting RMH retain the Plaintiff on the paysheet until PMH could accommodate the same. Ms. Weech (Hospital Administrator) at RMH wrote Ms. Mary Walker informing her of the Plaintiff's last day at RMH June 1, 2013, she also stated that all leave forms were sent to Ms. Walker regarding the Plaintiff. He stated that the Plaintiff never submitted any Leave Form to his supervisor Dr. Lockhart and therefore no leave form came to the Medical Chief of Staff Office; that a memo regarding the protocol for leave was sent to all Heads of Departments; that when any physician takes leave and does

not follow the accepted protocol, the Medical Chief of Staff will write Administration that the physician is away without leave.

93. During cross-examination he stated that it was mentioned in passing that the Plaintiff wanted to travel to Nassau; that when he approached Dr. Lockhart about it, Dr. Lockhart said he was waiting on the written protocol. The said protocol was that if a senior doctor is going to transfer to another institution he needs to put that in writing through his immediate supervisor to his office so that he can send it on to the Hospital Administrator; then the Hospital Administrator would ask them to write a corresponding report with that to give their opinion because it has implication for services; Dr. Lockhart has to write an opinion, EMC has to write an opinion; that goes to the Managing Director; he collaborates with a medical advisor and other key stakeholders in the system including PMH to decide if the transfer can occur. He stated that Ms. Weech did not share any information with him with his leave forms because the policy of the PHA is that if a doctor wants to apply for leave he gives his signed leave form to his supervisor, who will then bring the form to the Medical Chief of Staff office, he rubber stamps it, sign it and send it on to the Administrator. He also stated that his office keeps a record of all leaves that doctors take in the hospital; it is consolidated so they know how much leave is left in their records and that this process is in relation to vacation leave. He also stated that he never received the leave forms from Ms. Weech on behalf of the Plaintiff; that he never objected to the Plaintiff's transfer; that he never got an opportunity to give an opinion on the transfer because it never came through the proper protocol. He asserted that the Plaintiff came to Grand Bahama using the proper protocol and it was the same thing to do when returning to PMH. During re-examination he stated in part that he thought it strange the Plaintiff wrote to Dr. Charles Johnson seeking the transfer as that is not the proper protocol and that the reason for the proper protocol is both hospitals have to coordinate the transfer, so RMH can start planning for a replace and the receiving hospital can plan to accept the doctor to know how to fit that person. He further stated that to date he has yet to receive the Plaintiff's leave request for vacation leave or any other leave; that he has not signed any forms for leave nor received any communication from PHA that the Plaintiff was transferred at PMH as Chief of Staff.

## **Finding**

94. The evidence adduced on behalf of the Plaintiff reveals that the transfer protocol from one institution to the next was not followed by the Plaintiff. However, the said allegation was that by virtue of not following the protocol the Plaintiff demonstrated a disregard for authority. The Court accepts that the Plaintiff did not follow the designated protocol for transfer, and that such failure amounts to a failure to show respect for authority. Further, the Plaintiff in his evidence did not state why he failed to follow the proper protocol although he was aware of the same protocol.
95. As it relates to the example stated by the Defendants in their Defence that the Plaintiff ignored the Medical Staff Advisor's request for information and this amounted to a failure to show respect of authority the evidence of the Second Defendant and Anika Albury at paragraphs 27 and 28 above does not support this statement. The Court accepted as set out in paragraph 68 above that the evidence showed that attempts were made to locate and speak with the Plaintiff without success and that the Plaintiff was not aware that the Second Defendant's Administrator Assistant had tried to locate him on many occasions.
96. The sum total of that evidence to my mind was not that he willfully refused to meet with the Second Defendant but was that the Second Defendant failed in his efforts through Ms. Albury to make contact with the Plaintiff. Therefore, the Second Defendant could not have formed an honest belief that the Plaintiff ignored requests to meet with the Second Defendant.

### **"Overall Performance did not meet the expected standards of a consultant within the PHA"**

97. The Second Defendant also stated in the letter that "the Plaintiff's overall performance does not meet the expected standards of a consultant with the PHA". The Second Defendant did not lead any evidence on the expected standards of a consultant with the PHA and the evidence that was led by the Defendants does not support the said allegation. The evidence of the Plaintiff and his witnesses with respect to his overall performance as a consultant with the PHA is preferred. Moreover, on the Second Defendant's own evidence he never evaluated the Plaintiff, his surgeries were never audited, he never personally

observed the Plaintiff in the operating theatre, and in fact his evidence was that their paths "rarely" crossed paths.

### **Finding**

98. Therefore I find that the Second Defendant cannot rely on the defence of justification/truth as he has led no evidence which would lead him to form an honest belief as to the truth of the allegation.

**"Additionally, Dr. Ferguson is presently Away Without Leave (AWOL). No leave request has been submitted to the Medical Chief of Staff office to date."**

99. The evidence adduced and summarized above at paragraph 91 is that at the time of the writing of the letter the Second Defendant was not in receipt of a leave form. Further the Plaintiff states in his evidence that he made his request for leave to Ms. Weech and that she gave him verbal approval to do so and that he never submitted a leave form to the Second Defendant but submitted it to Ms. Weech. The evidence of Ms. Weech as found in paragraph 91 above is that the Plaintiff submitted leave forms to her but that the applications were sent to PMH; that she did not give the Plaintiff verbal approval to leave but in the circumstances if one has made a decision to go her response would have been she could not prevent him from going; that it is not official unless it is in writing; that at the time (June 13, 2013) when she wrote her letter in response to the said letter she had received the Plaintiff's leave forms.

### **Finding**

100. The Second Defendant's allegation that the Plaintiff was AWOL was predicated on the fact that at the date of the said letter he had not received the requisite leave forms. Considering the above evidence, the Court finds that the allegation of the Plaintiff presently AWOL was defamatory. However, the evidence before the Court (that the Plaintiff did not submit leave forms to the Second Defendant's office; that the leave forms inadvertently being sent to Nassau) was not known to the Second Defendant at the time that he wrote the letter, I find that the Second Defendant can rely on the defence of justification/truth as it relates to this defamatory statement.

**"I will also suggest that this physician can perhaps benefit from Psychiatric counseling."**

101. The evidence of the Second Defendant to which he states qualifies him to make such an assessment was in part that he does practice psychiatry; that if they see doctors misbehaving they will refer them for such counseling; that it is his duty to bring it to their attention and seek help for them; that his qualification for determining mental illness was received at the University of the West Indies as a Medical Practitioner; completed his residency in Obstetrics and Gynecology and received a doctorate in Medicine, Obstetrics and Gynecology; that he is trained in dealing with mental health issues such as post-partum depression in women, general depression, mental disorder, trained to recognize these things and treat them as a specialist; that as a general practitioner they rotate through psychiatry so they know behavioral disorders and personality disorders.

### **Finding**

102. While the Second Defendant has provided the basis upon which he states he is qualified to identify mental illnesses, I nevertheless find the statement defamatory. The Plaintiff was never subjected to any form of psychiatric evaluation by the Second Defendant or anyone else for that matter. In fact the Second Defendant stated in his evidence that he and the Plaintiff's paths rarely crossed. The Plaintiff was not his psychiatric patient. In short the Second Defendant did not produce any evidence to support his suggestion or the need for such type of counseling and as such I find he could not have formed an honest belief in the truth of such suggestion.

### **Disposition**

103. In summary, the Court finds that the Defendants can rely on the defence of justification/honest belief in the truth regarding the behaviours indicated in the said letter at paragraph 2b, i.e. Failure to perform consistent consultant/team ward rounds and paragraph 2h, i.e. Failure to show respect for authority as the evidence established that at the time of penning the letter the Second Defendant held an honest belief in the truth of the same. However, as it relates to the other behaviours indicated in the said letter at paragraph 2 and the remaining paragraphs and identified by their subheadings above the



Court finds that the Defendants defence of justification/ that the Second Defendant held an honest belief in the truth fails.

104. The Court accepts that the common law principle on the defence of qualified privilege is the principle as set out in **Watt v Longsdon [1930] supra** and stated in the above paragraphs. Further, it is also accepted by the Court that qualified privilege is invoked where the person who makes the communication has an interest or duty, legal, social or moral to make it known to the person whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it. In the instant case the Second Defendant's evidence in part was that the intention of the letter was to seek help on behalf of the Plaintiff; that he only had one side of the story; that he wanted to resolve the issues resulting from the complaints he had received; that the letter was done out of frustration and he wanted the key stakeholders to deal with the issues; that he did not want any disciplinary proceedings to be against the Plaintiff; that he was disappointed he was being interpreted as vindictive and that it was an attempt to correct the situation. The Second Defendant's evidence also was in part that the letter was addressed to the key stakeholders so that they could resolve the issues at the EMC meeting. However, the only evidence before the Court that the persons named and carbon copied on the letter and that the letter was received was that of Ms. Catherine Weech. Ms. Weech was the only named recipient to give evidence and as such the Court accepts that the letter was so published. The Court also accepts that as the Hospital Administrator Ms. Weech did have a corresponding interest or duty to receive it. This was confirmed in her letter in response to the Second Defendant's letter dated June 13, 2013. The contents of the said letter were:-

"June 13, 2013

Dr. Paul Ward  
Medical Chief of Staff  
Grand Bahama Health Services  
Freeport, Bahamas

Dear Dr. Ward,

**RE: DR. THEODORE FERGUSON – CONSULTANT SURGEON**

I write with reference to your communication dated June 6, 2013, regarding Dr. Ferguson and the contents contain therein. In response I would like to expand on the following:

1. The EMC was made aware that Dr. Ferguson formally wrote to the Administrator and advise of his plans to terminate his services and to return to Princess Margaret Hospital effective May 31, 2013.
2. Dr. Ferguson did make application for leave. Regrettably, the application was sent to Princess Margaret Hospital and not through your office. I have subsequently received all the leave forms associated with his departure and have shared this information with you. Dr. Ferguson is presently on earned leave. We have received verbal notification from PMH of his acceptance.
3. Following the notification of his return to PMH, I personally requested that you meet with Dr. Ferguson to understand his reason for leaving and his future plans.
4. Subsequent to my request, I made inquiries of you in our EMC as to whether a meeting was ever held by you with Dr. Ferguson. It is perhaps now fair to conclude that no meeting took place. In retrospect, meetings between yourselves could have addressed the matters you raised in your communication while Dr. Ferguson was with us.
5. The PHA Disciplinary Policy requires that an officer be given an opportunity to defend claims that have the potential to negatively impact his employment. I am not certain that your letter at this stage gives Dr. Ferguson a fair opportunity. It is my opinion that Dr. Ferguson should be allowed to defend these claims.
6. The fact that you have copied your communication to Senior Managers throughout the PHA, suggest that your intention is to negatively discredit his employment future. Despite the fact that we all know that while at the Rand Memorial Hospital, Dr. Ferguson made positive contributions as was noted by staff, patients and family members, none of which you have seen the need to acknowledge.

Finally in light of the on-going and until such time as you are prepared to meet with this individual, it is my humble suggestion that you rescind this communication in the spirit of goodwill.

With thanks,

Ms. Catherine Weech  
Hospital Administrator  
SMR/js

c: Managing Director – PHA

Medical Advisor – PHA  
Chairman of Medical Affairs – PHA  
Chief of Surgery – PMH  
Medical Chief of Staff – PMH  
EMC – GBHS”

105. As previously stated however, the defence of qualified privilege can be negated if it can be proven that the defamatory words so written and published were done maliciously.
106. Upon review of the said letter in the last paragraph the Second Defendant states “These consequences of these unacceptable behaviors should be dealt with in accordance with the Medical Byelaws.”
107. The evidence before the Court in particular the Plaintiff’s evidence was that the Second Defendant was vindictive and that he threw around his authority as Medical Chief of Staff.
108. While the Second Defendant in his evidence states that his intention of writing the letter was to seek help and some resolve as to the issues he was experiencing with the Plaintiff, that sentence in the last paragraph reveals that the intention of the letter was such that he wanted the Plaintiff to be dealt with in accordance of the Medical Byelaws. No evidence of the Medical Byelaws was submitted in evidence however it is evident that the Second Defendant’s use of the word “consequences” connote that the Second Defendant contemplated a possible penalty or punishment would be levied against the Plaintiff as a result of the unprofessional behaviour and other matters complained of in the said letter. The Court also accepts the submissions of the Plaintiff that the Second Defendant’s allegations in the letter was not founded by actual knowledge or investigation but rather hearsay. The Plaintiff also submitted that the Second Defendant wrote the letter essentially to prevent the Plaintiff’s transfer to Nassau; however the evidence before the Court did not suggest nor show that the Second Defendant sought to block the transfer. To my mind, as found in the last paragraph of the said letter, I am firm in my belief that the Second Defendant’s intention was for the Plaintiff to face some consequences or punishment or penalty as a result of what he says is unacceptable behaviour. I am of the view that malice was the driving force behind the letter and not an attempt to get the Plaintiff help as suggested by the Second Defendant.

109. Further, the Court's finding of the Second Defendant's malice is seen in the Second Defendant's unwillingness to rescind the said letter even after being advised by Ms. Weech to do so and that the Second Defendant did not send the Plaintiff nor copy the Plaintiff on the said letter. If his intention was to seek help for the Plaintiff or get the Plaintiff's side of the story, the Second Defendant's failure to provide the said letter to the Plaintiff to my mind is again evidence of some malice.
110. The Court finds that the Second Defendant's defence of qualified privilege fails as it relates to the defamatory comments/allegations made in the said letter. The Court in its determination above has indicated to which allegations the Second Defendant's defence of justification applies.
111. Additionally, the evidence of the Plaintiff, in particular the Plaintiff's witnesses was that had they not known the Plaintiff in their own relationship and read the letter they would have thought less of him in his capacity as a doctor.
112. Further, I find that the intention of the said letter and the defamatory statements contained within was to impute some lack of skill, qualification, knowledge, capacity, judgment or efficiency in the Plaintiff's medical career and ultimately possibly lower him in the estimation of right thinking members of society.
113. Therefore, having read the pleadings, heard the evidence, read the Submissions of Counsel, having reviewed and read the relevant case law and principles and at this juncture accept the submissions of Counsel for the Plaintiff, the Court finds in favor of the Plaintiff in this action. The Plaintiff is entitled to damages to be assessed. Costs are in the discretion of the Court and usually follow the event. I see no reason or special circumstances to depart from this as in all but two instances the Plaintiff has been successful in proving his case. The Defendants are to pay the Plaintiff's costs to be taxed if not agreed.
114. On one final matter that of the delay in delivering this Judgment the Defendants submissions were received on or about January 29, 2019 and the Court reserved the delivery of its Judgment to a date to be fixed regrettably, the extensive renovation to the Garnet Levarity Justice Centre during most of 2019 and the disruption caused thereby, by Hurricane Dorian and the Covid-19 pandemic and the delay in the delivery of transcripts

are events which greatly interfered with the Court's writing schedule. I apologize profusely for the delay in this matter.

Dated this 1<sup>st</sup> day of March, A.D. 2022

  
**Petra M. Hanna-Adderley**

**Justice**