

ST. CHRISTOPHER AND NEVIS CIRCUIT
ST. CHRISTOPHER

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2023/0236

BETWEEN:

[1] DR. TIMOTHY HARRIS

Claimant

and

[1] PHILLIPE MARTINEZ
[2] MSR MEDIA SKN LTD

Defendants

Appearances:

Mr. Peter Foster KC, with him Ms. Renee St. Rose KC and Shari-Ann Walker
for the Claimant; and
Ms. Hadya Dolphin for the Defendants

2025: 9 April 2025
24 June 2025

JUDGMENT

[1] **SAUNDERS, M:** The Claimant, Dr. Timothy Harris ("*Hon. Harris*"), is the former Prime Minister of St. Christopher and Nevis and the parliamentary representative for St. Christopher 7. His Claim is that the Defendants published a defamatory letter dated 17 November 2023 which accused him of corruption, fraud, and facilitating illegal sales of Citizenship by Investment ("*CBI*") shares at below statutory rates. Hon. Harris contends that the statements are false, malicious, and lack evidentiary support.

[2] The Defendants, an individual and the limited liability company he directs, have admitted publishing the letter but have pleaded, essentially, that the allegations are true. The Defendants' Defences cite alleged irregularities in CBI projects

such as the project for the construction of a new prison ("*the Prison Project*"), the Ramada Hotel ("*the Ramada Project*"), media reports and public statements by other politicians.

[3] By an application issued 20 January 2025 ("*the Application*") Hon. Harris applied to strike out the Defences of the Defendants pursuant to CPR Part 26.3(1)(b) because they do not comply with Part 58.3.

[4] The parties made oral submissions on the Application on 9 April 2025 and after reserving my decision, considering the oral and written submissions and the authorities relied upon, I have decided to dismiss the Application for the reasons which follow.

The Law

[5] CPR Part 58.3, with which Hon. Harris contends the Defendants' Defences have not complied, provides as follows:

"Defendant's statement of case

58.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that –

(a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and

(b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or

(c) pleads to like effect; must give particulars stating – (i) which of the words complained of are alleged to be statements of fact; and (ii) the facts and matters relied on in support of the allegation that the words are true." [emphasis supplied]

[6] The substance of Hon. Harris' complaint is that neither Defendant has advanced particulars to support their plea of justification, which are fundamentally the same, in satisfaction of CPR 58.3(c)(i) and (ii). In that regard reliance is placed mainly on the decision of the Belize Court of Appeal **Oscar Selgado v Edward Broaster** Civ. App. No. 11 of 2019 and the English Court of Appeal **Foley v Lord Ashcroft** [2012] EWCA Civ 423.

- [7] In **Oscar Selgado** the Belize Court of Appeal, in considering Rule 68.3 of the Supreme Court (Civil Procedure Rules), 2005, which is in *pari materia* with CPR 58.3, decided that a defendant is obligated to:
- a. plead their case with sufficient precision and clarity so as to enable the claimant to know what they will be obliged to prove and what case they must meet¹;
 - b. spell out in their pleading the meaning of the words, which if it is their true meaning, they will seek to justify. These are the so-called “Lucas-Box” particulars².
- [8] In **Foley v Lord Ashcroft**, the English Court of Appeal dismissed an appeal against an interlocutory order striking out the defendants’ defence of justification on the basis that the plea had not been made with sufficient particularity. In determining the appeal, it was restated that particulars in respect of a plea of justification should be supportive of and enable the claimant to understand the case being argued. The substance of the dispute before the court of appeal was whether, generally, the particulars of justification pleaded drew a clear line between the claimant and corruption in the Turks and Caicos Islands which was the central thesis of the defendant’s publications. More specifically, it was decided that particulars regarding the advancement of a loan by the claimant to Hon. Michael Misick³, which was said to have been made with the knowledge that Mr. Misick was corrupt and with the motivation of obtaining influence and favour, did not explain how one could come to the aforesaid conclusions.

Whether the Defendants have sufficiently particularised the words complained of which are alleged to be statements of fact

- [9] In this matter the Defendants have admitted publishing a letter on 17 November 2023 (“*the Letter*”), which is the subject of these libel proceedings, to Hon.

¹ Oscar Selgado v Edward Broaster Civ. App. No. 11 of 2019; at [36]

² Ibid; at [37]

³ Former Premier of the Turks and Caicos Islands

Harris, among others. The following central factual allegations were acknowledged by the Defendants as being contained in the Letter⁴:

- a. the addressees, including Hon. Harris, misrepresented to the Defendants and their American Investors that the CBI program was transparent, and compliant with the law regarding the minimum investment price;
- b. to the contrary, "during [the addressees'] administration thousands of citizenship shares were illegally sold at prices that were a fraction of the legal rate which was represented to the international community";
- c. the aforesaid practice was illegal;
- d. this practice took place under the addressees' administration and management;
- e. The Defendants' investigation discovered "numerous potential violations of United States laws including fraud, money laundering, tax evasion, and corruption";
- f. Notwithstanding the representations by the addressees to the Defendants, the Caribbean Galaxy Real Estate Corporation established a fraudulent network to sell shares of projects other than those of the Defendants at a fraction of their legal price, especially concerning the Prison Project;
- g. Instructions were given by the Defendants to their US lawyers to begin legal action in the United States against the addressees, and all of their associated conspirators, including Caribbean Galaxy Real Estate Corporation and Ying Jin.

[10] The Claim alleges that the Letter, properly understood, has the following defamatory meanings of Hon. Harris:

- a. He has committed criminal offences under laws of United States, including (a) Fraud (b) Money laundering, (c) Tax evasion, (d) Corruption⁵;

⁴ Paragraph 4(b)(i)-(vii) of each Defendant's Defence

⁵ Paragraph 5(i) of the Statement of Claim

- b. He conspired with others to illegally sell Citizenship by Investment (CBI) shares at a fraction of their legal rate⁶;
- c. He illegally and fraudulently misrepresented to the Defendants the value of CBI shares whilst establishing a network of conspirators to fraudulently sell shares at a fraction of their legal price⁷.
- d. He headed or was or is a member of a party of conspirators to fraudulently and illegally undersell CBI shares⁸.
- e. He headed or was part of or was complicit in an illegal finance and discounting scheme to illegally sell CBI shares at a fraction of their legal price⁹.
- f. He abused his office as Prime Minister by illegally and or corruptly engaging in the establishment of a group of conspirators for personal gain¹⁰.
- g. He is a criminal who has committed offences of fraud, tax evasion, money laundering and bribery and corruption¹¹.
- h. He was involved with and associated with Approved CBI developers to conspire with them to fix their prices at a fraction of their value, and to participate in the proceeds by receiving bribes¹².

[11] The Defendants have admitted the alleged meanings of the letter at 10(b)-(f) and 10(h) above and have denied that the Letter has the meanings attributed to it at 10(a) and 10(g). In relation to those meanings, the Defendants chide that the Letter has the meaning that the Defendants' investigations revealed

⁶ Paragraph 5(ii) of the Statement of Claim

⁷ Paragraph 5(ii) of the Statement of Claim

⁸ Paragraph 6(i) of the Statement of Claim

⁹ Paragraph 6(ii) of the Statement of Claim

¹⁰ Paragraph 6(iii) of the Statement of Claim

¹¹ Paragraph 6(iv) of the Statement of Claim

¹² Paragraph 6(v) of the Statement of Claim

numerous potential violations of US law, including the referenced offences but that the Letter did not state that investigations revealed that Hon. Harris himself was guilty of all of the stated offences¹³. The Defendants summarise by alleging that the main allegation arising from the Letter is one of corruption.

- [12] In the Court's view, the factual allegations set out at [9] above, and pleaded at 4(b) of the Defences, sufficiently identify the statements of fact which the Defendants intend to prove at trial and which they are obliged to plead pursuant to CPR 58.3(c)(i). Furthermore, the Defendants have specifically admitted the meanings which they intend to prove at trial but have sought to avoid two of the alleged meanings on the basis that the publication cannot be reasonably understood in the manner contended.

Whether the Defendants have sufficiently particularised the facts and matters relied on in support of their allegations that the words are true.

- [13] At paragraph 8 of the Defences the Defendants deny malice and state that the allegations set out at [9] above, having the meanings they have admitted, are true.
- [14] The Defendants then set out in seriatim certain facts¹⁴ which, if true, in the Court's opinion, amount to particulars sufficient to raise the defence of justification and do convey to Hon. Harris the nature of the Defendants' case. Of those particulars, the following are some of the more relevant to the allegations made in the Letter and the admitted meanings thereof:
- a. The company Caribbean Galaxy Real Estate Corporation ("*Caribbean Galaxy*"), which was designated as an approved developer in relation to Alternative Investment Options under the Citizenship by Investment Act was awarded 5,500 citizenship units for sale for the Prison Project, which at the legally required price would have yielded US\$962.5 million;

¹³ Paragraph 5(a) of the Defences

¹⁴ Paragraphs 8(a)-(y) of the Defences

- b. The Prison Project had been retroactively designated a Public Good Project under SRO No. 7 of 2022.
- c. The Prison Project was treated as having been approved under the Alternative Investment Option for a Public Good Project Developer a requirement of which was that to qualify for citizenship, a person was required to invest a minimum of \$175,000 which included a fixed Government fee of US\$50,000.
- d. Caribbean Galaxy sold most if not all of the citizenship units allocated to the Prison Project for a fraction of the price mandated by law.
- e. In relation to the Ramada Project, Caribbean Galaxy implemented various schemes to enable it to sell the required investments for significantly less than the statutory minimum, including but not limited to:
 - i. Sale of shares in non-existent companies; and
 - ii. Sale of shares with guaranteed but non-existent returns on investment.
- f. In furtherance of the aforesaid unlawful scheme, Caribbean Galaxy conspired with escrow agents to falsely inform the Citizenship by Investment Unit that the relevant applicants/investors had deposited the requisite investment with the escrow agent when in fact no such deposit was made, the escrow agent instead rolling over its own funds and falsely declaring them to be deposits paid by the relevant applicants/investors;
- g. The scheme was designed by Caribbean Galaxy to sell the requisite investments for less than the legal minimum.
- h. Between 2015 and 2022, Hon. Harris was aware of the breaches of the law by Caribbean Galaxy in underselling the requisite investments and

nonetheless processed applications submitted by or on behalf of Caribbean Galaxy.

- i. Hon. Harris was influenced by Caribbean Galaxy to permit the unlawful behaviour by the payment to him of bribes, by providing him with perquisites such as gifts and by allocating large numbers of applications to be processed by Nicola Capital Limited, a processing agent owned by Lenworth Harris and Alexis Nisbett, Hon. Harris's brother and nephew, respectively.

[15] **IF** the Defendants are able to substantiate the above serious but yet unproven allegations they would have justified the defamatory meanings of the Letter ([10] above) which they accepted and the statements of fact they have given an intention to justify ([9] above)¹⁵. That the particulars in support of the libel in **Foley v Lord Ashcroft** were unable so to do was the very specific ratio in that matter but which, in the Court's view, is distinguishable in the present proceedings.

[16] In other words, it cannot be said that the case Hon. Harris has to meet is unclear. In summary, the issues are:

- a. Whether Hon. Harris, while he was the Prime Minister and the Minister with responsibility for Citizenship, knowingly permitted Caribbean Galaxy to sell CBI investments for less than the legal minimum— It is alleged, which was not contested in the Reply, that Hon. Harris was responsible for signing all certificates of citizenship issued to successful CBI applicants; and

¹⁵ An appropriate definition of corrupt conduct can be found in Parts 1 and 2 of the 3rd Schedule of the Anti-Corruption Act, 2023, including the following in respect of such conduct which is triable on indictment:

"1. Corrupt conduct, triable on indictment, includes— (a) a person in public life soliciting, seeking, accepting, promising to take, or taking any bribe, valuables, loan, reward, advantage or other personal or private benefit for (i) himself or herself; (ii) members of his or her family; or (iii) any other person associated with the person in public life; in return for promising to perform or performing, or promising to refrain from performing or refraining from performing, his or her official duties;..."

- b. Whether Hon. Harris permitted Caribbean Galaxy to perform the unlawful acts because he was paid bribes and given perquisites in the form of being allocated large numbers of CBI applications for processing by Nicola Capital Limited, a processing agent allegedly owned by Hon. Harris' brother and nephew, respectively.

[17] At the hearing of the Application Counsel for Hon. Harris made the argument that no details were given by the Defendants to substantiate the above issues. For example, it was suggested that Hon. Harris was not informed of how and when the alleged bribes were paid. In the Court's view, such details risk condescending to matters of evidence which need not be pleaded. All that is required at this stage, as the authorities suggest, is that Hon. Harris be sufficiently aware of the case that he has to meet so that he can answer it. The Court also relies on the following statements made in **McPhilemy v Times Newspapers Ltd and others** [1999] 3 All ER 775, 788-89 regarding the proper place for particulars of justification in defamation matters:

"Legal principles relevant to this appeal include the following. (a) A defendant is entitled to seek to justify any meaning, defamatory of the plaintiff, which the words complained of are reasonably capable of bearing, but may not seek to justify a separate and distinct meaning of which the plaintiff does not complain—...(b) According to historic procedure, the defendant must give proper particulars of the facts on which he relies to justify the meaning for which he contends. I say 'according to historic procedure' because, in my view, the procedure, as it has been understood and used, is often unsatisfactory. It will be a matter for future consideration whether the procedure should be reconsidered in the light of the litigation culture, which the Civil Procedure Rules 1998, SI 1998/3132 (CPR), embody. It may, in particular, no longer be tolerable in libel actions to have excessively long particulars of justification, which often (as in this case) give rise to expensive and time consuming adversarial pre-trial contests. Rather, perhaps, the particulars should succinctly set out the scope of the intended justification, leaving the detail to be given once only in witness statements. (c) Defendant's particulars of justification and libel cases generally should be strictly confined to those matters which are essential to the proper

disposal of the real issues between the parties—see Polly Peck (Holdings) plc v Trelford [1986] 2 All ER 84 at 94, [1986] QB 1000 at 1021 and Rechem International Ltd v Express Newspapers Ltd [1992] CA Transcript 514. This may mean cutting out peripheral matters, the burden of whose investigation is disproportionate to their importance...” [emphasis supplied]

[18] Finally, it must also be considered that even if further details (such as the date and form of the bribes allegedly paid) were desired for the conduct of Hon. Harris’ case, there was recourse in the form of a request for further information under Part 34. In **Realtime Systems Ltd. v. Renraw Investments Ltd. and Others** Civ. App. No. 238 of 2011 (Trinidad and Tobago) Jamadar JA (as he then was), in considering the similar but more circumscribed Trinidad and Tobago rule, decided that the trial Judge was wrong to strike out the claim form and statement of case for lacking particularity and that it would have been more appropriate for an order for better particulars to have been made. On appeal to the Judicial Committee of the Privy Council, the Board, in agreeing with the appellate Court, stated that “*it does not follow from Rule 35.3 that, if the pleadings are not satisfactory prior to the exchange of witness statements, nothing can be done about it*”. In this jurisdiction, where a request for further information can be made even prior to the filing of witness statements, there is no reason why Hon. Harris could not have first sought the incidental details he wished through a Part 34 request rather than a strike out of the Defence.

[19] For all of the above reasons the Application to Strike Out the Claim is dismissed. The Court will hear the parties’ submissions on costs at the next hearing of the matter.

Yuri Saunders

Master

Registrar