

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Claim Number: SLUHCV2024/0283 formerly SLUHCV2018/0613

BETWEEN:

PETERSON FRANCIS

Claimant

-and-

[1] **CHRISTOPHER HUNTE**

[2] **CHOICE TV/MEDIAZONE PRODUCTION INCORPORATED**

Defendants

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mr. Horace Fraser for the Claimant
Mr. Leevie Herelle for the Defendants

2025: February 11

REASONS

Claimant's Evidential Objections / Application to Strike Court

[1] **PARIAGSINGH, J** - At the commencement of this trial today, I gave an oral decision on the Claimant's evidential objections and application to strike out and indicated that I would provide fuller reasons later. I now do so.

[2] Before the Court is the Claimant's application filed on 21 January 2021, seeking to strike out certain paragraphs of the Defendant's witness statements. The Claimant also seeks to strike out two paragraphs of the Defendant's defence. Both parties have filed written submissions, and I have heard Counsel for the Defendant further on questions which the Court posed arising out of the written submissions. The following are the reasons for my decision:

WITNESS STATEMENT OF CHRISTOPHER HUNTE:

- [3] The Claimant seeks to have paragraphs 14 and 17 of this witness statement struck out.
The Claimant also seeks to have exhibits CH4, CH5, CH6, CH7, and CH8 struck out.

[4] Paragraph 14 states:

"Nevertheless, I deny the allegation of defamation. It is my firm view that (1) the words that I published and which the Claimant is complaining about are not defamatory and (2) because of their truth, did not and were incapable of defaming the Claimant."

- [5] The sentence of this paragraphs is consistent with the pleaded defence. The second sentence is not a fact it is the witness's view. The Claimant can address the weight to be attached to this sentence in the witness statement in submissions. The second part of the second sentence raises the truth of the allegations which the Defendants are not being permitted to pursue as a defence for reasons I will set out later.

- [6] The part of the second sentence of Paragraph 14 which reads "and (2) because of their truth, did not and were incapable of defaming the Claimant" is accordingly struck out.

[7] Paragraph 17 states:

"In particular, it is true and the tax-paying public has a right to know: -

- 1) The Claimant did in fact find approximately three million in the City Council account(s) upon assuming office. This is confirmed by the Claimant's press conference aired on HTS on the [] day of [] 2017 (see Exhibit **CH4**).
- 2) The Claimant did in fact sign cheques on the City Council account(s) and this is/was a major cause for concern. See Minutes of the Statutory Meeting held on 5 December 2017 at paragraph 6 (see Exhibit **CH5**).
- 3) The Claimant did purchase a vehicle with the use of the City Council's money. This is confirmed under paragraph 7 of the Minutes of the Statutory Meeting held on 5 December 2017 (see Exhibits **CH5 and CH6**, evidencing cheque payments).

- 4) The Claimant has given Hyman James, aka Mouse, work contracts (see Exhibit **CH7**).
- 5) Under the premiership of Dr Kenny Anthony, the Claimant was removed as Chairman of the Housing Association.
- 6) The accounts of the City Council deteriorated and are/were in a worse condition than when the Claimant took office and continue to be a major concern for many. See auditor's report dated August 2018 (see Exhibit **CH8**)."

[8] The following reasons are applicable to all documents annexed to this witness statement. Not a single document was disclosed by the Defendant in this matter pursuant to the order for standard disclosure. When asked about the sanction in Rule 28 CPR, Counsel readily accepted that there had been non-compliance and advanced that the Claimant had "notice" of the documents as they were attached to the witness statement.

[9] Disclosure serves three main purposes:

- 1) To telegraph what documents are relevant to the issues in a claim.
- 2) To identify from the relevant documents which documents a party is relying on in support of its claim.
- 3) To allow a party to admit or dispute the authenticity of a document and to seek inspection of documents.

[10] Disclosure is **not** merely attaching documents to a statement of case or witness statement. I do not accept or agree with the Defendant that providing "notice" by attaching the documents to the witness statement satisfies disclosure requirements.

[11] More importantly, in addition to not disclosing any documents in this case, the Defendant neither identified nor annexed any documents to their defence. When asked about compliance with Rule 10.5(6) CPR (which remained unchanged in the new rules),

Counsel for the Defendant made the incredible submission that compliance with this rule is achieved when documents are annexed to a witness statement. That submission is wholly misconceived.

[12] The mechanism in the CPR mandates that a litigant must identify or annex any document relevant to their claim. They must then disclose the document, and barring a notice to dispute the authenticity of the document (Rule 28.18 CPR) or other statutory requirements (e.g. a hearsay notice), the document can be put into evidence through a witness or by consent.

[13] Allowing the Defendant's documents would amount to trial by ambush. The Claimant would have to deal with documents at trial that are neither referenced in a pleaded case nor disclosed to permit the Claimant to challenge their authenticity.

[14] The Defendant had the option of serving a list of documents late or applying for relief from sanctions. This was not pursued.

[15] Additionally, the Court has the discretion to grant permission for the documents to be used. Even this option was not utilised, and no such application was made.

[16] For these reasons, **all** of the documents attached to the Defendant's witness statements in this claim are struck out. Some are also struck out for additional reasons, including:

- 1) **CH4** – The alleged press conference was referenced but not exhibited to the witness statement filed, nor were the Defendants able to produce it at trial. Furthermore, subparagraph (a) contains missing dates, indicating an incomplete witness statement.
- 2) **CH5** – The Minutes of the Statutory Meeting exhibited is not a verified copy. There are several handwritten changes. When asked who made those changes, Counsel for the Defendant was unable to assist. The authenticity of this

document was never an issue the Claimant had the opportunity to challenge as it was never disclosed.

- 3) **CH6** – Several cheques were exhibited by the Defendant, none of which were identified in the defence or disclosed. Moreover, some of the cheques were drawn from the Claimant's personal account and some from an account in the name of the Castries City Council. These, too, were not identified or annexed to the defence nor disclosed. They were sought to be introduced for the first time in a bundle of exhibits to a witness statement.
- 4) **CH7** – This alleged document, purportedly a contract between the Claimant and Hyman James aka Mouse, was never produced and is not a document featuring in this case except for the reference in the witness statement.
- 5) **CH8** – An auditor's report which was not identified or annexed to the defence, not disclosed, and is a hearsay document that does not comply with the requirements of the Evidence Act for the admission of hearsay.

[17] Accordingly, paragraph 17 and all the documents referred to therein are struck out.

WITNESS STATEMENT OF WAYNE WHITFIELD:

[18] The objections to this witness statement are all meritorious and would be granted for the same reasons outlined above. During the course of arguments on the morning of the trial, Counsel for the Defendants indicated for the first time that this proposed witness was deceased. As such, no application having been made for this evidence to be adduced without calling him as a witness pursuant to Rule 29.8(1) CPR, the objections are rendered otiose.

STRIKING OUT OF PARAGRAPHS 13 AND 14 OF THE DEFENCE:

[19] During the course of arguments, Counsel for the Defendants raised an issue regarding the status of their application dated 28 April 2020 for an extension of time to file a re-

amended Defence, contending that it had never been determined by the Court. However, the Court's record confirms that this assertion is incorrect. The Defence filed by the Defendants on 6 February 2020 was struck out by an order of Sandcroft M (Ag.) on 11 May 2020. As a result, the only operative Defence in this matter is the Defence filed on 11 June 2019.

[20] **Paragraphs 13 and 14 of that Defence** read as follows:

- "13. Given the satirical and political nature of the 'Politically Incorrect' programme, any comments proven to be uttered by the First Defendant would have raised justifiable issues in the public interest; and/or the Defendants did not make any statements of fact capable of defaming the Claimant. Further, the Defendants affirm that in Saint Lucia, free speech is one of the important tenets that underpins our democracy. Persons who place themselves within the visibility of the political arena must expect to be the subject of public scrutiny, comment, and/or public censure—even if this results in personal discomfort, disquiet, or embarrassment. It was incumbent upon the Claimant not to be so thin-skinned that, in response, he now seeks to use the Courts as a means of silencing criticism and avoiding public scrutiny.
14. Accordingly, the Defendants plead fair comment and justification, asserting that the matters complained of are issues of public interest."

[21] The Claimant argues that, following the decision of the Judicial Committee of the Privy Council in **Ernest Hilaire v Allen Chastanet [2023] UKPC 22**, the common law defences of justification, fair comment, and Reynolds privilege have been abolished and replaced by statutory defences under the Defamation Act 2013. The Claimant further submits that, while the Defendants' pleaded defences may resemble the statutory defences of truth, honest opinion, and publication in the public interest under sections 2, 3, and 4 of the UK Defamation Act, the Defence as pleaded is fundamentally deficient.

[22] According to **Zuckerman on Civil Procedure Principles of Practice Third Ed. at page 373, para 9.36**:

"The full pre-trial and trial process is appropriate and useful for resolving serious or difficult controversies, but not where a party advances a groundless claim or

defence or abuses the court process. There is no justification for investing court and litigant resources in following the pretrial and trial process where the outcome is a foregone conclusion...In such cases the court has therefore the power to strike out the offending claim or defence and thereby avoid unnecessary expense and delay.”

[23] And further at **page 375, para 9.40**:

“... a defence may be struck out if it consists of a bare denial and sets out no coherent statement of facts, or if the facts it sets out could not amount in law to a defence to the claim. The most straightforward case for striking out is... a defence that discloses no grounds for resisting the claim.”

[24] The Defendants have not provided any particulars in support of the stated common law defences, and in my opinion, they amount to bare denials to the Claimant’s allegations. The Court does not accept Counsel for the Defendants’ argument that the defence and the witness statements together constituted the pleadings of the Defendants. The Court also does not accept the submission that one’s defence is merely a reply to the Claimant’s Statement of Case. The Defendants were under an obligation to set out their case and have not done so in respect of these outlined defences.

[25] It was also open to the Defendants to apply for permission to amend their Defence after the Privy Council’s ruling to align their case with the defences available under the Defamation Act 2013. However, they failed to do so. The Court will not permit the Defendants to benefit from their inaction by allowing them to advance witness evidence which is unsupported by their defence.

[26] Further, even if the Defendants were permitted to advance statutory defences, their pleadings are so vague and lacking in particulars that it would be highly prejudicial to the Claimant to allow them to rely on it. Permitting the Defendants to proceed on such bare pleadings would effectively allow them to introduce their defence for the first time through witness statements, depriving the Claimant of the opportunity to address these matters properly in his pleadings and evidence.

[27] Accordingly, paragraphs 13 and 14 of the Defence filed on 11 June 2019 are struck out.

The only defence the Defendants are entitled to advance at trial is that the words complained of are not defamatory. Additionally, the Defendants may maintain their contention that the words complained of by the Claimant were not, in fact, the actual words uttered.

COSTS:

[28] There is no reason to depart from the general rule that costs follow the event. The Defendant must pay the Claimant's costs of the application, summarily assessed in the sum of \$1,500.00.

ORDERS:

[29] For these reasons, I made the following orders:

- 1) The part of the second sentence of Paragraph 14 which reads "and (2) because of their truth, did not and were incapable of defaming the Claimant" is accordingly struck out
- 2) Paragraph of the witness statement of Christopher Hunte is struck out.
- 3) Exhibits CH4, CH5, CH6, CH7, and CH8 to paragraph 17 of Christopher Hunte's witness statement are struck out.
- 4) The witness statement of Wayne Whitfield not being tendered into evidence at the trial, the objections to this statement are rendered nugatory.
- 5) Paragraphs 13 and 14 of the Defendant's defence filed on 11 June 2019 are struck out.

- 6) The Defendants are to pay the Claimant's costs of this application, summarily assessed at \$1,500.00.



**Alvin Pariagsingh
Judge**

By the Court,

Registrar