

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

SKBHCV2022/0175

BETWEEN:

JOSEPHINE HUGGINS

Claimant

and

SKN CHOICE TIMES LIMITED

First Defendant

and

DWIGHT COZIER

Second Defendant

Appearances:

Mr. Anthony E. Gonzalves KC with him Ms. Chauntelle Hobson for the Claimant
Mrs. M. Angela Cozier for the Defendants

2024: April 8,9,10;
July 8.

JUDGMENT

- [1] **GILL J:** Following eight years of litigation, this claim in defamation has reached the stage of judgment after trial. Given the contentious history of this matter, there is no doubt that there is still some way to go.
- [2] On 9th May 2016, the claimant Josephine Huggins (“Mrs. Huggins” or “the claimant”) filed a claim form and statement of claim alleging that an article published in the SKN Leewards Times Newspaper defamed her character. The claimant’s case is that SKN Choice Times Limited (“the 1st defendant” or “Choice”) and Dwight Cozier

("the 2nd defendant" or "Mr. Cozier") (together "the defendants") falsely and maliciously wrote, printed and/or published, or caused or authorized or permitted to be written, printed and/or published, of and concerning her, and of and concerning her in her position as Cabinet Secretary in the then government of St. Kitts and Nevis, certain words defamatory of her.

- [3] The original newspaper was produced at trial and tendered in evidence. The full newspaper article reads as follows:

"Media houses requested to investigate payments, relationship

"BASSETERRE, ST. KITTS (LPCU)

The independent media houses in St. Kitts and Nevis are been asked to look into two matters involving the Federation's Prime Minister Dr. Timothy Harris. "It is been said by the people of Tabernacle that a young man known to many as "Big T" Harris who happens to be the nephew of Timothy Harris is receiving EC\$5,000 check every month from the government and he is claiming to be the butler of his uncle, Timothy Harris, the prime minister and also the gardener," Leader of the Opposition, the Rt.Hon. Dr. Denzil L. Douglas disclosed on Wednesday. "As far as people in Tabernacle are aware, there is no hedge for him to keep. The entire yard is concreted. So what is he being paid for," asked Dr. Douglas during Wednesday's edition of "Issues" on Freedom FM 106.5. He added: "While the Prime Minister's nephew is being paid \$5,000 per month, PEP workers, trainees and others in the public service are been laid off." "The Press should enquire into this," suggested Dr. Douglas. Former Prime Minister Douglas also wants the media to look into the relationship between a Barbados construction company that built the temporary Basseterre High School (BHS) buildings and a Barbados national Lucille Moe, an advisor of Prime Minister Harris, who assisted in the recent election campaign. "Is there any relationship between Lucille Moe and the Barbadian company that was brought here and (PM) Harris must also explain if there is any special relationship, any special thing to be obtained as a result of the relationship between Lucille Moe, the Barbadian construction company and Timothy Harris

*himself the prime minister” said Dr. Douglas. **Wednesday social media was abuzz with information that the Permanent Secretary in the Office of the Prime Minister, Mr. Osbert De Souza, has refused to approve a request by the Prime Minister that two high ranking police officers, Mc Arthur Browne and Adolph Adams, be paid EC\$25,000. “for assistance with the installation of the new government.” It is reported that the Cabinet Secretary, Mrs. Josephine Huggins, eventually signed off on the prime minister’s request.”*** (Emphasis added)

- [4] Mrs. Huggins takes offence to the segment highlighted above at the end of the article, which refers to her by name. In her statement of claim, Mrs. Huggins pleaded that the words complained of, in the context in which they appeared, in their natural and ordinary meaning, meant and were understood to mean that:
- (a) The claimant in her capacity as Cabinet Secretary approved the payment of state or public funds to two police officers for activities rendered by them, not to or for the state, but to benefit the political party or the parties that had been recently elected to form the new government.
 - (b) The claimant had sanctioned or authorized the payment of public or state funds for a private and/or improper purpose.
 - (c) The claimant had acted dishonestly and improperly.
 - (d) The claimant is a dishonest person.
 - (e) The claimant cannot be trusted with state or public funds.
 - (f) The claimant was under the influence of the Prime Minister and did not exercise her own independent judgment in her capacity as Cabinet Secretary but capitulated or succumbed to the request of the Prime Minister to approve an improper payment of public funds.
 - (g) The claimant is unfit to hold the office of Cabinet Secretary.
 - (h) The claimant did not properly or honestly discharge her duties as Cabinet Secretary by approving the Prime Minister’s request for an improper payment of public funds.
 - (i) The claimant was involved in a corrupt activity.
 - (j) The claimant is susceptible to corruption.

- [5] On 5th April 2024, the defendants filed an application for determination on preliminary issues as to whether Choice and Mr. Cozier are proper defendants to the claim. They contend that the claim is unsustainable against them in the circumstances where the evidence is overwhelming that the wrong parties were sued. On the morning of the trial, learned counsel for the defendants, Mrs. Cozier, submitted to the court that the trial ought not to proceed without a determination of the preliminary point, and requested a written decision thereof. In light of the protracted battle that has occupied the court for the last several years, this court resisted further delay of the matter and determined that the preliminary issue would be dealt with as part of the trial. I note the defendants' relatively recent attempt at striking out the claim by an application, the crux of which was that the defendants are not the correct parties to the claim. On 15th May 2023, that application was dismissed by Pariagsingh M, as he then was, highlighting disputes of fact to be determined at trial. In his judgment, the learned master referred to an earlier determination by Actie M, as she then was, to dismiss an application by Mr. Cozier where he relied on the separate legal entity principle to strike out the claim brought against him in his personal capacity.
- [6] In addition to the preliminary issue application, and in the event it does not succeed, the defendants raise the defences of fair comment, qualified privilege including the Reynolds principle, reportage and justification.
- [7] Apart from Mrs. Huggins and Mr. Cozier, the following witnesses testified at the trial:
- i. **Donald Caines.** Mr. Caines is the younger brother of the claimant. His evidence is that when he saw the article, he got a copy of the newspaper and went to his sister's house the next day. Over breakfast, he told her that she 'should go and do something about the article because this is slanderous business'.
 - ii. **Petrona Thomas.** Ms. Thomas, a long-standing public officer, referred to the claimant as her mentor and more than a friend to her. When she read

the article, she felt distraught and hurt that Mrs. Huggins' name was being slandered.

- iii. **Precious Mills.** This witness was brought by the claimant by way of witness summons. Ms. Mills was a freelance reporter for the newspaper in question. When asked about the process that she undertook to submit articles that she wrote to the newspaper, she replied that she was given email addresses to which she sent the particular article. She denied that she ever received instructions from Mr. Cozier about anything to do with the process.

Issues

- [8] The court must determine:
- i. Whether the 1st defendant SKN Choice Times Limited is a proper party to the proceedings as the publisher of the alleged libel;
 - ii. Whether the 2nd defendant Dwight Cozier is a proper party to the proceedings;
 - iii. Being already determined that the words complained of are capable of having a defamatory meaning, whether they are in fact defamatory of the claimant;
 - iv. If so, whether the defendants have proved any of the defences of fair comment, qualified privilege including Reynolds privilege, reportage and justification.
 - v. If the defences fail, the quantum of damages to be awarded to the claimant.

Whether the 1st defendant SKN Choice Times Limited is a proper party as the publisher of the words complained of

- [9] In an action for defamation, the proper person to be sued as the defendant is the person who published the defamatory words or caused them to be published.¹ Accordingly, the claim is brought against the defendants alleging that they published the offending words or caused them to be published. However, the defendants are asking the court to dismiss the claim on the basis that it must fail as the defendants are not the proper parties before the court.

¹ See Gatley on Libel and Slander Twelfth Edition, para. 8.1

- [10] On 31st August 2022, the claimant applied to the court for an order for specific disclosure against the 1st defendant Choice. The order was granted on 29th September 2022 and in compliance with the order, Choice disclosed documents which, the defendants contend, make it clear that the wrong parties were sued.
- [11] The defendants explain that the documents disclosed material evidence that in 2012, there was a merger and acquisition that took place involving three companies namely, Leewards Media Group Limited, Ramsbury Properties Limited and Choice FM Limited. Thereafter, in 2012, the 1st defendant Choice was formed for the purpose of refinancing an existing loan and acting as a holding company for Leewards Media Group Limited and Choice FM Limited.
- [12] The defendants submit that the documents disclosed proved that the claimant brought her claim against the wrong parties, because the owner and publisher of the newspaper, SKN Leewards Times Newspaper, that is said to have published the alleged libel, is in fact the Leewards Media Group Limited and not the 1st defendant Choice, which is merely a holding company of Leewards Media Group Limited.
- [13] The defendants posit that it is trite company law that as a holding company, the 1st defendant Choice has no liability for the actions or alleged liability in libel of the Leewards Media Group Limited which fully owns the SKN Leewards Times Newspaper. As such, the defendants maintain that the claimant's claim against Choice and its director, Mr. Cozier, the 2nd defendant, discloses no reasonable ground against the defendants and is therefore bound to fail, and so must be struck out pursuant to Rule 26.3 (1)(b) and (c) of the Civil Procedure Rules (Revised Edition) 2023 (CPR 2023).
- [14] The claimant attacks the preliminary issue in respect of the 1st defendant in light of the defendants' pleadings. In her statement of claim, the claimant grounds liability against the 1st defendant by alleging that it was the publisher and/or printer and/or operator of the newspaper.

[15] The claimant points out to the court the following numerous admissions in the Further Amended Defence of the 1st defendant ("FADOFD"):

- (i) That it is a Nevis company with its registered office situated at Ramsbury, Charlestown, Nevis, and it is the editor and publisher of the newspaper. (Para. 10 of the FADOFD)
- (ii) That it circulates and makes the newspaper available online through the website www.skncit.com. (Para. 10 of the FADOFD)
- (iii) That the words complained of were published by it. (Para. 15 of the FADOFD)
- (iv) That the article in question was published by it. (Para. 17 of the FADOFD)
- (v) That the article and words in question (described by the 1st defendant as the "report") were published by it. (Para. 40 of the FADOFD)
- (vi) That it is common knowledge that it prints and publishes the Leewards Times Newspaper from the address set out on page 2 of the newspaper. (Para. 47 of the FADOFD)
- (vii) That it is the editor and proprietor of the newspaper (Paras. 48 and 62 (a) of the FADOFD)
- (viii) That it printed the article in question (described as a report). (Para. 62(b) of the FADOFD)
- (ix) That it reported and reproduced the article in question. (Para. 62(c) of the FADOFD)

[16] Mrs. Huggins contends that the above are admissions by the 1st defendant of multiple acts of participation in the publication, including that it was the publisher of the newspaper.

[17] The claimant further points out that these admissions were in fact supported by separate admissions made by the 2nd defendant, Mr. Cozier, in the Amended Defence of the 2nd defendant ("ADOSD") where he asserted:

- (a) That the newspaper belonged to the 1st defendant. (Para. 2 of the ADOSD)

- (b) The 1st defendant a media company, circulates and makes the newspaper available online through the website www.skncit.com, and gives consent and/or direction and/or permission to do so. (Para. 2 of the ADOSD).
- (c) The 1st defendant circulates the newspaper within the Federation of St. Christopher and Nevis and is the editor and publisher of the newspaper (Para. 47 of the ADOSD).
- (d) The 1st defendant was the editor as well as publisher of the newspaper at the material time. (Para. 48 of the ADOSD).
- (e) The 1st defendant is the publisher and editor of the newspaper. (Para. 53 of the ADOSD).

[18] The claimant strenuously submits that the defendants are bound by their pleadings. In the defendants' Notice of Application for Determination of Preliminary Issues,² they put forward, in parenthesis, that the admission in their pleadings of the 1st defendant being the publisher of the newspaper was a mistake. Paragraph 28 of the application reads:

"In fact, the Respondent's only response to the material documentary evidence disclosed by the Applicants is that the Applicants admitted (although mistakenly) that the 1st Applicant was the publisher of the newspaper and the 1st Applicant is, accordingly, bound by its pleadings."

[19] The claimant is adamant that since no subsequent amendments were made to the filed defences, the admissions stand and the 1st defendant cannot lead evidence contrary to or take a position that is not covered in its pleadings.³ CPR 10.5(1) provides that the defence must set out all the facts on which the defendant relies to dispute the claim. Further, CPR 10.7 reads:

The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

[20] On the day of the trial and before it started, on the claimant's previously filed application, I struck out parts of Mr. Cozier's witness statement which stated, among

² Filed on 5th April 2024

³ See *Rasheed Wilks v Donovan Williams* [2022] JMCA Civ. 15

other things, that the 1st defendant was a holding company and carried on no other business. As the claimant urged upon the court, these allegations of fact were never pleaded.

[21] I am of the view that, as submitted by the claimant, by alleging that the 1st defendant made a mistake, the defendants are seeking to take an improper route to sidestep their own pleadings, which is not permitted. The defendants are not allowed to use the documents disclosed on the claimant's application to seek to put forward a different case from what they pleaded. The defences clearly, and on multiple occasions, establish that the 1st defendant was the publisher of the article in question and the court will not succumb to the defendants' brazen and improper attempt to resile from their own pleaded cases. Therefore, on the pleadings, including the defendants', it is clear that the 1st defendant was the publisher of the words alleged to be defamatory of the claimant, and I rule that the 1st defendant Choice is a proper defendant to this claim.

[22] In any event, the claimant pointed out admissions in the pleadings, and the evidence showing that the 1st defendant carried on business other than merely holding shares.

Whether the 2nd defendant is a proper party to the claim

[23] The statement of claim alleges the participation of the 2nd defendant Mr. Cozier in the publication as follows:

- (i) That he was a director and the sole shareholder of the 1st defendant;
- (ii) That he is and was at all material times an officer and/or the manager and/or the editor and /or the directing mind and controlling personality behind the operations of the newspaper;
- (iii) Further or in the alternative, that he participated in and/or authorized and/or secured the publication in question; that the article in question was prepared and the publication in question was effected with his participation, knowledge, consent, or approval.

(iv) Further or in the alternative, that he knew of the content of the article in question and having authority over persons to obtain the removal of the offending article and specifically the offending identified words from the newspaper before its publication, failed to so exercise his authority to ensure its removal from the newspaper, resulting in its publication.

[24] The claimant points out that it is readily apparent that the claims against Mr. Cozier are not limited to or dependent upon him simply being a director of the 1st defendant and nothing more. In fact, the claimant's submissions on the participation of Mr. Cozier zero in on the allegations that he was the editor of the newspaper, and further or alternatively, that he authorised and/or secured or procured the publication of the article in question.

[25] Mr. Cozier denies that he was an editor or employee of the 1st defendant and states that other than director, he never acted in any capacity including those alleged by the claimant. The defendants submit that the claimant's pleadings failed to show that Mr. Cozier committed or participated in the act of writing, publishing or printing the article complained of, or that he directed, or procured the writing, publishing and printing of the article done by others.

Whether the 2nd defendant was the Editor of the newspaper

[26] The claimant's position is that Mr. Cozier acted as or performed the role of editor of the newspaper. The claimant asks the court to come to that conclusion on certain facts taken together.

[27] In breach of section 12(a) of the Newspapers Act,⁴ the Christian name and surname of the editor were not stated in the newspaper. The filed defences of the defendants state that the 1st defendant was the editor. The claimant does not accept this. In cross-examination, the 2nd defendant admitted that a biological person acted as editor. He accepted that the editorial functions of reading, reviewing, and

⁴ Cap 18.23 of the Laws of Saint Christopher and Nevis

determining what was to be included or excluded, had to be carried on by a biological person. However, he told the court that he did not know who made the editorial decision to include the article in the newspaper. He was unable to provide any names. The claimant submits that if the 1st defendant was the editor but the actual editing had to be done by a natural person, it is shocking that Mr. Cozier, a director, was not able to say who the editor was, or among whom the editor might be. This is especially so when Mr. Cozier pleaded that the “...1st defendant had employees responsible for its tasks” and that “...as far as he is aware there was no single individual working with the 1st Defendant as editor at the material time.” The claimant contends that the clear inference from the filed defences is that there were persons, but yet Mr. Cozier could not name any such person.

[28] In contrast, in his witness statement, Mr. Cozier stated that the 1st defendant Choice has never had an editor, that Choice had no employment contracts and that “*the 1st Defendant has no contracts with independent contractors and so has not engaged, retained or contracted for the provision of management, printing, publishing or editorial services for the business or its operations*”. The claimant argues that if Choice had no employees, and had no independent contracts with anyone, that left only its directors as actors. The claimant points out that the director who on the evidence was most involved in the operations of Choice was Mr. Cozier. He was undeniably an officer of the company as he signed a document as its president. He signed the company’s business documents, and the contract with the Government of St. Kitts and Nevis for the provision of live broadcast services. The witness Precious Mills in her evidence stated that she was recruited by Mr. Cozier to work for Choice as an independent journalist. It was Mr. Cozier who on his own evidence reached out to one Erasmus Williams, the person he claimed to be the author of the article, after he received the claimant’s lawyer’s letter before action. At no time whatsoever was there any evidence of any activity or involvement by the other director one Mr. Nisbett. (Mr. Cozier and Mr. Nisbett being the only two directors)

[29] The claimant submits that the inability of Mr. Cozier to identify any names at all as the possible editor(s), when he was being sued and when it was being alleged that he was editor, is simply startling. The claimant posits that it cannot be accepted that Mr. Cozier, as a director did not know what was happening in his company (he was also sole shareholder). The claimant urges the court to reject the picture that Mr. Cozier wishes to paint of being so very far removed from and oblivious to the day-to-day operations of the 1st defendant. Under both the bylaws of the 1st defendant and the Companies Ordinance,⁵ the business and affairs of the 1st defendant are vested in its directors, noting that the 1st defendant had only two directors.

Whether the 2nd defendant authorised and/or secured or procured the publication of the article in question

[30] Further, or alternatively, the claimant submits that the evidence leads to the inescapable conclusion that it was Mr. Cozier who authorized, procured and/or directed that the article in question be published. The claimant asks the court to come to this conclusion in light of (among other things) the following:

- (i) Mr. Cozier stated that he listened to the interview with the former Prime Minister The Hon. Dr. Denzil Douglas that formed the basis for the article.
- (ii) Mr. Cozier stated that, if the allegations were true, it would be in the public interest that the allegations be investigated.
- (iii) Mr. Cozier, having listened to the interview, and having formed that view, the related article then appeared in the newspaper of which he is a director and president.

[31] The claimant submits that it is highly improbable and simply difficult to conclude that, Mr. Cozier having listened to the interview, having formed an opinion that the allegations in Dr. Douglas' interview, if true, were a matter of public interest, and having formed an opinion that the allegations should be investigated, and being a director of a media house with power to direct such an investigation, simply left the

⁵ Cap. 7.06 (N) of the Laws of Saint Christopher and Nevis (Nevis Ordinances), Section 58

matter there and did nothing to implement or support that call by the former Prime Minister who requested the investigation.

- [32] In making a determination as to whether Mr. Cozier is a proper party to these proceedings, I find favour with the claimant's submissions. Mr. Cozier accepts that a biological person must have provided editorial services for the newspaper article, but his evidence is that the 1st defendant did not, and yet he could not name any editor. This begs the question of Mr. Cozier, "If not you, then who?" The evidence from Mr. Cozier leaves this question curiously unanswered. In light of the fact that Mr. Cozier is the sole shareholder and one of only two directors of the 1st defendant, and having heard the evidence of Mr. Cozier and observed his demeanour, and on the whole of the evidence on this aspect of the case as highlighted by the claimant, I rule that Mr. Cozier was the officer/director/editor who participated in or authorised or procured and/or directed the publication of the article containing the defamatory words on the claimant published in the newspaper. Therefore, Mr. Cozier is a proper defendant to these proceedings.

Whether the words complained of were in fact defamatory of the claimant

- [33] The 1st defendant's defence at paragraph 10 denied that the report of the public funds payment approval by the Cabinet Secretary was defamatory or capable of being defamatory and set out the basis for such a denial as follows:

"10.i. the statement complained of by the Claimant was contained in a release prepared by the public relations and press arm of the St. Kitts Labour Party [the Labour Party Communications Unit or LPCU], of an interview with Dr. Denzil Douglas, the Leader of the Opposition, on Freedom FM 106.5, which release was already in the public domain and was widely disseminated to social media on the Radio Station Freedom FM's Facebook social media wall;

10.ii in that interview, Dr. Douglas requested an investigation by media houses into payments and relationships involving the Prime Minister Dr. Timothy Harris;

10.iii. *towards the end of the release from the LPCU, it was also reported that the Claimant signed off on requests made by the Prime Minister for payments to two police officers;*

10.iv. *nowhere in the final two sentences, which are the words complained of by the Claimant in paragraph 10 of the Statement of Claim, is any allegation made against the Claimant of any improper conduct or wrongdoing;*

10.v. *nowhere in the words complained of by the Claimant in paragraph 10 of the Statement of Claim is there any allegation made against any of the two high ranking policemen referred to therein of any improper conduct or wrongdoing, in which the Claimant could have realistically appeared to be complicit;*

10.vi. *moreover, the words 'it is reported' has the same definition as the single word 'reportedly' which is defined by the Merriam–Webster dictionary as 'according to what has been said' or, 'according to what some say' so the phrase 'it is reported' is used to express the author's belief that the information given is not necessarily true and may need further verification;*

10.vii. *accordingly, the thrust of the article as indicated by its headline was that 'Media Houses', of which the 1st Defendant is one, were called upon by the Leader of the Opposition in St. Kitts and Nevis to investigate payments and relationships;*

10.viii *logically therefore, the purpose of the investigation being requested would be the determination of whether the reports were true or not."*

[34] The defendants submit that there is therefore no suggestion that the claimant did anything improper in eventually signing off on the Prime Minister's request.

[35] It has already been determined that the words complained of in this matter are capable of having the meanings attributed to them. On an application by the defendants that the words complained of were not capable of bearing the meanings

attributed to them either expressly or by innuendo, Drysdale M, as she then was, having set out the applicable law, stated:⁶

“Although only one sentence in the article is directly referable to the claimant, the article must be considered in whole including the heading to make a determination as to whether a fair minded and reasonable person would attribute the meanings suggested by the claimant.”

[36] At paragraph 34, in refusing the defendants' application, the court ruled:

“Therefore after examining all the circumstances in the matter, the allegations made in the articles coupled with the manner in which certain suggestions were made by the use of inverted commas and the noting that the request for payment by the Prime minister was not approved by the Permanent secretary but then later by the claimant, the article is subject to the inference that the claimant was part and parcel of some wrongdoing in the approval of a questionable and or improper payment. Ergo the words complained about by the claimant are therefore capable of having the meanings attributed to them.”

The decision of the learned master was affirmed by the Court of Appeal.⁷

[37] That being settled, it is now for this court to determine whether the words would reasonably in fact be understood in a defamatory meaning.⁸ This two-pronged approach was explained in **Ramsahoye v Peter Taylor Co. Ltd.**⁹ where Bollers J echoed the dicta of **Woolford v Bishop**¹⁰ where he stated:

“On this aspect of the case, the single duty which devolves on this Court in its dual role is to determine whether the words are capable of a defamatory meaning and given such capability, whether the words are in fact libelous of the Plaintiff. If the Court determines the first question in favour of the Plaintiff, the Court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The Court will not be astute to find subtle interpretations for plain words of obvious and invidious import. Where words are clearly defamatory on their face, a finding that they are capable of being defamatory will almost inevitably lead to the conclusion that they are defamatory in the circumstances.”

⁶ Decision delivered July 11, 2018 at para. 25

⁷ SKBHCVAP2018/0012; Certificate of Results of Appeal dated 30th January 2019

⁸ *Abraham v The Advocate* [1946] 2 WWR at p. 182(PC)

⁹ [1964] LRBG 29

¹⁰ Cited in Suit No. NEVHCV2009/0098 *Beulah Mills v Michael Perkins and Nevis Broadcasting Limited*, delivered July 23, 2014, at para. 74

[38] In **Beulah Mills v Michael Perkins and Nevis Broadcasting Limited**,¹¹ Williams J (Ag.), as she then was, explained the approach to be taken, Her Ladyship having already found that the words in question were capable of bearing the defamatory meanings ascribed by the claimant. Under the heading “**Issue No. 2 Whether the words are Defamatory**” Williams J stated:

“[84] The Court must examine the words and decide what ordinary reader or listener of average intelligence would understand by the words.

See: Ramsahoye vs. Peter Taylor and Co. Ltd.

[85] It is established Law that for a statement to be defamatory, it must contain either expressly or by implication, statements of fact which would tend to lower the Claimant in the estimation of right thinking members of society generally or it exposes her to contempt, public hatred and ridicule. It is trite Law that a statement is defamatory if it imputes dishonesty to a person in the context of his **Trade, business or profession**. Again in determining whether the statement so imputes any such lack of quality, the test is that, of how the ordinary, reasonable man who is fair minded, to whom the words are published is likely to understand them.

[86] In applying the test, this Court is of the considered opinion that the ordinary reasonable man would come to the conclusion and understand that the words used by Mr. Perkins impute that Ms. Mills was a corrupt, unfit, and indecent person, who had committed gross irregularities at the Electoral Office and abused her position in order to illegally and fraudulently register persons on the Electoral list.
I am also therefore of the considered view that the statements made by Mr. Perkins would likely to be understood by the right thinking members of society as defamatory of Ms. Mills.”

[39] The claimant submits that an ordinary, intelligent and unbiased person would find that the words set out in paragraph 10 of the statement of claim are in fact defamatory of the claimant, and do bear each of the natural and ordinary meanings ascribed to them in the statement of claim.

¹¹ NEVHCV2009/0098

[40] When read in its entirety, the article imputes wrongdoing on the part of the claimant, the Cabinet Secretary at the material time, in authorising payments to two police officers not connected with State duties, but connected with installing a new government, after another senior public officer declined to do so. At this stage, I am of the view that this would be understood by right-thinking members of society to be defamatory of Mrs. Huggins. Accordingly, I rule that the words in question are in fact defamatory of the claimant, and do bear each of the natural and ordinary meanings ascribed to them in paragraphs 12 and 13 of the statement of claim.

Whether the defendants have proved any of the defences to the claim

[41] The defendants have raised a number of defences including fair comment on a matter of public interest, qualified privilege including Reynolds privilege, reportage and justification. The claimant contends that none of the defences is available to the defendants. Both defendants pleaded:

- 1) *Insofar as the words complained of in paragraph 10 of the Statement of Claim consist of statements of facts, they are true in substance and in fact, and insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest.*
- 2) *The words complained of are contained in a release from the Labour Party Communication Unit (LPCU), the Opposition's press and communication arm itself, of an interview with Dr. Denzil Douglas, the Opposition Leader in St. Kitts and Nevis on Freedom FM 106.5.*
- 3) *In that interview Dr. Douglas questioned payments made by the Prime Minister to certain persons and issued a call to the media houses of the Federation to investigate the relationships surrounding these payments.*
- 4) *While the leader of the Opposition was on the radio, comments were coming in to the radio station from various social media platforms raising other instances of payments requested by the Prime Minister and commenting thereon.*

- 5) *The words of which the Claimant complains in paragraph 10 of her Statement of Claim were therefore reported as comments on the statements made by the Leader of the Opposition in St. Kitts and Nevis, Dr. Denzil Douglas, during that interview and reflected the author's [the LPCU's] knowledge that social media was actively expressing views on the topic about the Leader of the Opposition's appeal for investigations and more information.*
- 6) *If indeed the police officers mentioned in the article assisted in the installation of the new government, then it is a matter of public interest how they were paid for those services, which would warrant any member of the public asking for an investigation of any such payments.*
- 7) *In all of the circumstances, the 1st Defendant was under a moral and social duty to publish the release from the LPCU.*
- 8) ***Accordingly, the article complained of was published as fair comment on reports already in the public domain and therefore published in the public interest with the honest belief that all portions were true, and therefore is protected by Reynolds privilege, the reportage principle and fair comment on a matter of public interest.***

[42] Further, Mr. Cozier pleads the defence of justification as follows:

*The 2nd Defendant denies paragraph 9 of the Statement of Claim, that the words complained of by the Claimant in paragraphs 9 and 10 of the Statement of Claim are false, because the only words which refer to the Claimant therein are in the statement which reads that **'It is reported that the Cabinet Secretary [the Claimant] ... eventually signed off on the prime minister's request'**, which words are true.*

- [43] In furtherance of their defences, in characterizing the article as a report or comment, the defendants submit that the starting point is that the headline reads that '**Media Houses asked to investigate payments, relationship**', and the report stated at the commencement that the Prime Minister's government, which was newly installed, was being accused by the Opposition of making certain payments to certain private contractors and to the named police officers and that the media houses in the jurisdiction are asked to investigate these.
- [44] The defendants argue that it is obvious to the reader that the report does not purport to be a statement of fact but a report on the statements made by the Leader of the Opposition.
- [45] They further submit that it is equally obvious that the claimant is not being described in the report as acting on her own but within the confines of her public office as the Cabinet Secretary as provided by Section 62 of the Constitution of St. Kitts and Nevis.
- [46] The defendants urge upon the court that when one considers the report by the 1st defendant in its entirety, there is an immediate recognition that the majority of the report is comprised of statements made by the Leader of the Opposition and former Prime Minister requesting the investigation by media houses of certain payments made by the present Prime Minister to parties that, in his opinion, warranted investigation as to the relationship between those parties and the present Prime Minister.
- [47] The defendants submit that the claimant's allegations as to any request made for improper payments by the Prime Minister does not attribute any blame to the claimant, because the report does not direct any such allegation at the claimant. Rather, the report clearly states that it was a request made by the Prime Minister.

Fair comment

[48] The learned authors of Halsbury's Laws of England¹² provide the meaning of fair comment as follows:

"The defence of fair comment is in the nature of a general right, and enables any member of the public to express defamatory opinions on matters of public interest¹³. Such opinions must be based on true facts or facts stated on a privileged occasion, and the defence only applies to statements which are recognizable by the reader or listeners as expressions of opinion rather than statements of fact."¹⁴

[49] The defence was canvassed and restated to be now known as 'honest comment' by the UK Supreme Court in **Spillar and Another v Joseph and Ors.**¹⁵ The court stated:

"The issue that has arisen in this case results from a change of emphasis in relation to the elements of the defence of fair comment. Those elements were, and still are:

- The statement in issue is comment and not fact;
- The matter in respect of which the comment is made is a matter of public interest;
- Where that matter consists of facts alleged to have occurred, the facts are true;
- The comment is "fair"; and
- The statement is not made maliciously."

[50] This aspect of the defences can be disposed of in short order, and at the outset. There is no comment in the article at all. The major portion of the article is a report of statements by the then Leader of the Opposition and former Prime Minister on a radio program. Near the end is a statement about information being on social media about the refusal by the permanent secretary of the then Prime Minister's request to pay two police officers "for assistance with the installation of the new government". The last sentence of the article refers to the claimant. *"It is reported that the Cabinet Secretary, Mrs. Josephine Huggins, eventually signed off on the prime minister's request."* This is not a comment. It is a statement of the fact of it being reported that the claimant did something, that is, she signed off on the Prime

¹² Vol. 28, 4th Edition Reissue para. 135

¹³ *Slim v Daily Telegraph* [1968] 1 All ER 497 at 503

¹⁴ *Telnikoff v Matusevitch* [1992] 2 AC 343.

¹⁵ [2010] UKSC 53 at para. 83

Minister's request. As submitted by the claimant, the words complained of were imputations of fact and not comment. In my view, the defence of fair comment is therefore not available to the defendants.

Qualified privilege/*Reynolds privilege*

- [51] A claim in defamation may be defended in circumstances of qualified privilege. In Gatley on Libel and Slander,¹⁶ the defence is explained as follows:

“There are circumstances in which, on grounds of public policy and convenience, less than those which give rise to absolute privilege, a person may yet, without incurring liability for defamation, make statements about another which are defamatory and in fact untrue. In such cases a person is protected if the statement was “fairly warranted by the occasion” (that is to say, fell within the scope of the purpose for which the law grants privilege) and so long as it is not shown that the statement was made with malice, i.e. with some indirect or improper motive or knowing it to be untrue, or with reckless indifference as to its truth.”

- [52] The law on qualified privilege has developed from its early stages when the test was laid down by Lord Atkinson in **Adam v Ward**¹⁷ as follows:

“... 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 made has a corresponding interest or duty to receive it. This reciprocity is essential.”

- [53] In respect of the availability of the defence of qualified privilege in publication in the news media, in **Reynolds v Times Newspapers Ltd**,¹⁸ the law was advanced making the defence available to publication of defamatory statements to the world at large, provided that the publication was a piece of responsible journalism that satisfied the duty-interest test, that is, the public had a right to know the particular information. Qualified privilege in this sense has become famously known as

¹⁶ Tenth Edition at para. 14.1

¹⁷ [1916-17] All ER 157 at 170

¹⁸ [2001] AC 127

Reynolds privilege. Lord Nicholls set out a list of ten matters to be considered when making a determination as to whether one can rely on the defence. They are:

- i. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
- ii. The nature of the information and the extent to which the subject matter is a matter of public concern.
- iii. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
- iv. The steps taken to verify the information.
- v. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
- vi. The urgency of the matter. News is often a perishable commodity.
- vii. Whether comment was sought from the claimant. He may have information others do not possess or have not disclosed. An approach to the claimant will not always be necessary.
- viii. Whether the publication contained the gist of the claimant's side of the story.
- ix. The tone of the publication. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statement of fact.
- x. The circulation of the publication, including the timing.

[54] The list is non-exhaustive and the weight to be given to the factors in this list and other relevant factors varies on a case by case basis.

[55] In **Floyd v Times Newspapers Ltd**,¹⁹ Lord Brown stated:

“In deciding whether Reynolds privilege attaches (whether the Reynolds public interest defence lies) the judge, on true analysis, is deciding but a single question: could whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest? In deciding this single question, of course, a host of different considerations are in play.”

[56] In this case, I consider that the defamatory words are serious as they amount to an allegation of improper action in public office by the most senior functionary in the public service.

[57] The article as a whole highlights the need for investigation into certain payments being made with State funds for improper purposes. Whereas this is a matter of public concern or interest, this alone does not satisfy the test to afford the defendants the benefit of the defence. This point was made clear in **Pinard-Byrne v Lennox Linton**²⁰ where the judgment of Cottle J, in rejecting the appellant’s public interest submission, was restored by the Privy Council. Paragraph 32 of the judgment reads:

“As the Board sees it, it is not sufficient for the court to focus on the underlying circumstances. Thus is not sufficient to say, as the Court of Appeal did, that the underlying project was a matter of public interest or a matter of public importance. The judge correctly accepted that it was, as did the Court of Appeal. The Board recognises that evidence that [the appellant] was guilty of wrongdoing would be a matter of public importance. However, in the opinion of the Board, before making allegations to that effect it was the duty of [the respondent] to carry out a reasonable investigation to ascertain whether they were true. The problem is that [the respondent] did not carry out an investigation to that end. The Board accepts that, as the Court of Appeal concludes, he made some investigations into the Project. There is however no evidence that he investigated whether [the appellant] was guilty of the kind of wrongdoing alleged in the words complained of.”

¹⁹ [2012] 2 AC 273 at para. 113

²⁰ [2015] UKPC 41

- [58] In respect of the direct reference to the claimant, the source of the information is social media. I agree with the submission by the claimant that the source was not reliable, verifiable, or traceable. There were no steps taken to verify the information. There was no evidence that any comments were sought from the claimant. The article did not include any possible side of the claimant as no comment was sought from her.
- [59] As submitted by the claimant, there must be a duty on the publisher to publish the words as well as an interest in the public in reading them²¹. This duty does not arise when the matter merely concerns suspicions or allegations or was under investigation.²² There is no general common law privilege of fair information as a matter of public interest,²³ or in relation to allegations concerning public figures.
- [60] The article highlights instances of improper payments to certain individuals as requiring investigation. However, it singles out the claimant as reportedly signing off on such payments to police officers. In my view, it cannot be said that this was a piece of responsible journalism as it relates to the claimant. Notwithstanding the public interest component of the need to investigate allegations of using taxpayers' money improperly, there is absolutely no evidence that the defendants or any of them made any attempt to verify the allegation against the claimant before publishing the offending sentence on her. There was no legal, social or moral duty on the defendants to publish the offending words on the claimant and there was no public interest in receiving this uninvestigated allegation. In these circumstances, the defendants cannot properly rely on Reynolds privilege so that this defence fails.
- [61] Having determined that there was no duty on the defendants to publish the defamatory statement on the claimant, it is not necessary to deal with the issue of malice. However, even if qualified privilege were to apply, the defence will fail by the presence of malice.

²¹ *Blackshaw v Lord* [1983] 2 All ER 311, CA.

²² *Ibid*

²³ See Halsbury's Laws of England 3rd Ed. Para 123.

[62] The defendants submit that it cannot be said with any truth that either of them was actuated by malice for the claimant. They point out that the evidence of the claimant was clear under cross-examination that she never met Mr. Cozier before she saw him in court, nor had she ever had any relationship with the 1st defendant Choice or Mr. Cozier. Mr. Cozier said in his evidence that he never knew Mrs. Huggins and only saw her for the first time in court. The defendants submit therefore that this makes it clear that there could be no malice established or proved on the part of Mr. Cozier or Choice.

[63] The claimant submits that both defendants were actuated by malice as set out in her statement of claim. The claimant contends that the defendants knew that the words complained of were false, or were reckless or willfully blind as to whether the words published and allegations made in relation to her were true or false, or were indifferent as to whether the words were false. The pleadings of both defendants reveal that the words “it is reported” were used to indicate that the authors at the LPCU did not necessarily believe in the truth of the statement/were unsure of its accuracy, and whether the statements were true would be determined by the called-upon investigation.

[64] The question for the court to consider is what constitutes malice as it relates to qualified privilege. Gatley on Libel and Slander²⁴ states:

“The defence of qualified privilege is defeated by malice. This is established if the claimant shows...that the defendant acted from an improper motive (e.g. spite or revenge or personal gain) rather than to fulfil the purpose for which the law grants the privilege and **proof that the defendant was aware that the statement was untrue or was reckless as to its truth, is conclusive evidence of malice.**” (*Emphasis added*)

[65] The evidence before the court, that the defendants made no effort to investigate or verify the defamatory words published about the claimant before publication,

²⁴ Cited in GDAHCV2015/0458 *Patrick Simmons v Keith Claudius Mitchell*, delivered May 15, 2023 at para. 87

demonstrates recklessness or indifference as to the truth of the allegation, and amounts to malice. Had there been a finding of a duty to publish and a public interest in receiving the information, this would make the defence of qualified privilege unavailable to the defendants.

Reportage

- [66] Reportage is “a special, and relatively rare, form of Reynolds privilege”.²⁵
- [67] The defendants contend that Choice simply reported the statements of the Leader of the Opposition as this report was sent by its author, the Labour Party Communication Unit (LPCU), to the officer responsible for putting the reports in the newspaper and transmitting same to the printer in St. Maarten (at the time) for printing.
- [68] They highlight the case of **Roberts v Gable**²⁶ which shows that the defence of reportage safeguards “the neutral reporting without adoption or embellishment or subscribing to any belief in its truth of attributed allegations of both sides of a political and possibly some other kind of dispute”.
- [69] The claimant argues that the defence of reportage is not available to the defendants and provides extensive submissions to destroy the defendants’ reliance on it. The claimant lists the matters to be taken into account when considering whether there is a defence of reportage as set out commencing at paragraph 61 by Ward LJ in **Roberts v Gable** as follows:
- 1) The information must be in the public interest.
 - 2) In a true case of reportage there is no need to take steps to ensure the accuracy of the published information.
 - 3) To qualify as reportage, the report, judging the thrust of it as a whole, must have the effect of reporting, not the truth of the statements, but the fact that they were made. If upon a proper construction of the thrust of the article, the defamatory material is attributed to another and is not

²⁵ *Flood v Times Newspapers Ltd* [2012] 2 AC at para. 77 per Lord Phillips MR

²⁶ [2008] QB 502 (CA) per Ward LJ at para. 53

being put forward as true, then a responsible journalist would not need to take steps to verify its accuracy. He is absolved from that responsibility because he is simply reporting in a neutral fashion the fact that it has been said without adopting the truth.

- 4) Since the test is to establish the effect of the article as a whole, it is for the judge to rule upon it in a way analogous to a ruling on a meaning. It is not enough for the journalist to assert what his intention was, though his evidence may well be material to the decision. The test is objective, not subjective. All the circumstances surrounding the gathering of the information, the manner of its reporting and the purpose to be served will be material.
- 5) The protection will be lost if the journalist adopts the report and makes it his own or if he fails to report the story in a fair, disinterested and neutral way. Once the protection is lost, he must then show, if he can, that it was a piece of responsible journalism even though he did not check the accuracy of the report.
- 6) To justify the attack on the claimant's reputation the publication must always meet the standards of responsible journalism as the concept has developed from *Reynolds*, the burden being on the defendants. All the circumstances of the case and the 10 factors listed by Lord Nicholls adjusted as may be necessary for the special nature of reportage must be considered in order to reach the necessary conclusion that this was the product of responsible journalism.
- 7) The seriousness of the allegation (Lord Nicholl's factor 1) is obviously relevant for the harm it does to reputation if the charges are untrue. Ordinarily it makes verification all the more important. The critical question is: does the public have the right to know the fact that these allegations were being made one against the other?" As Lord Hoffman said at paragraph 51 in **Jameel**:²⁷

²⁷ *Jameel v Wall Street Journal* [2007] 1 AC 359 (HL)

“The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the article.”

All the circumstances of the case are brought into play to find the answer, but if it is affirmative, then *reportage* must be allowed to protect the journalist who, having adopted the allegation, takes no steps to verify his story.

- 8) The relevant factors properly applied will embrace the significance of the protagonists in public life and there is no need for insistence as pre-conditions for reportage on the defendant being a responsible person or the claimant being a public figure.
- 9) Urgency is relevant such that editorial judgments made in haste of a pressing deadline may require more allowance to be made than those decisions made with luxury of time.

[70] The claimant uses the subsequent case of **Charman v Orion Publishing Group**²⁸ to argue that the defence of reportage is applicable only if the effect of repeating an allegation is to report the fact that the allegation was made, not the truth of the defamatory material.

[71] The claimant further cites the case of **Prince Radu of Hohenzollern v Houston** ²⁹ where the defence was denied because the court stated that it was a requirement that the article be carefully balanced so that readers would be able to ascertain broadly what each side was saying - and there was no such balance.

[72] The claimant submits that based on the cases of **Roberts v Gable**, **Al-Fagih v HH Saudi Research & Marketing (UK) Ltd**³⁰ and **Prince Radu**, reciprocity of allegations is required for reportage to apply. This reciprocity of allegations was also

²⁸ [2008] 1 All ER 750, per Ward LJ at para. 50

²⁹ [2007] EWHC 2745 (QB), para. 37 per Eady J

³⁰ [2001] EWCA Civ 1634

considered essential in the Canadian Supreme Court in **Grant v Torstar Corp**³¹ where one of the requirements was that both sides to a dispute must be reported.

[73] The claimant points out that no case on reportage has reached the United Kingdom Supreme Court but in **Jameel v Wall Street Journal**,³² two members of the Supreme Court stressed the attribution principle. Lord Hoffman stated that the defence of reportage may apply in cases where the public interest lies simply in the fact that the statement was made, provided that it is clear that the publisher does not subscribe to any belief in its truth. Baroness Hale cautioned that if the publisher intends only to report what others have said, and does not believe the information to be true, “he would be well advised to make this clear...”.

[74] In **Grant v Torstar Corporation**,³³ the Canadian Supreme Court outlined principles regarding reportage, citing English Court of Appeal cases. The Court stated that if a dispute is a matter of public interest and the allegations are fairly reported, the publisher should incur no liability even if some of the statements made may be defamatory and untrue. This exception to the repetition rule applies if the report attributes the statement to a person, preferably identified, thereby avoiding total unaccountability, indicates (expressly or implicitly) that its truth has not been verified, sets out both sides of the dispute fairly, and provides the context in which the statements were made.

[75] The claimant is adamant that any attempt to rely on reportage must fail at the first hurdle due to lack of proper attribution. The claimant submits that attribution is a key (the most important) element identified in every reportage case. The claimant argues the following:

- (a) To a reasonable reader, the article was that of or originated with the defendants, and was not a report of what someone else had said or written. To rely on reportage, the defamatory material must be attributed to another. It must be

³¹ [2009] 3 SCR 640

³² [2007] 1 AC 359 (HL)

³³ [2009] 3 SCR 640 at para. 120

clear that the defendant is reporting what someone else said, and not adopting it as his own. In this case the defendants did not make it clear that this was a reproduction of an article written by another person and that they did not believe in its truth. To the contrary, here the defendants pleaded that the 1st defendant believed in the truth of the article and this was repeated by the 2nd defendant in cross-examination.

- (b) At the top of the article under the heading “**Media houses requested to investigate payments, relationship**”, there appeared on the left the words, “BASSETERRE ST. KITTS (LPCU)”. Counsel for the defendants directed the claimant and each of her two witnesses to those words and asked each of them what they understood LPCU stood for. On the evidence before the court, neither the claimant nor any of her two witnesses was aware, when they read the article, that LPCU meant Labour Party Communications Unit. Ergo, neither the claimant nor any of her two witnesses were aware that this was a reproduction of a report authored by a person other than the 1st defendant or anyone working for the 1st defendant. Further, the defendants tendered no evidence to show that “LPCU” was commonly known to readers of the newspaper or that anyone reading the newspaper would conclude that the article was a repetition of a release by another person or entity. The claimant acknowledges that a Disclaimer appears on the first page of the newspaper as follows: “*Aside from the Editorial, views expressed in letters, reports, articles, commentaries or personal columns, do not necessarily represent the views or opinions of the SKN Leewards Times.*” This however would be insufficient as (a) there was no way anyone would be able to identify the article as being authored by someone not working for the newspaper, (b) the very use of the phrase in the disclaimer of “not necessarily” was at best equivocal - it might be or it might not be - that was fatal, and (c) it cannot be assumed that readers would have read that disclaimer as there is no presumption that readers read the entire newspaper. In fact in cross-examination, Mr. Cozier himself admitted that he would normally just skip through the paper. Thus, by merely placing “LPCU” (which on the evidence neither the claimant nor her witnesses understood anyway) the defendants had

not done enough to attribute the article to another person, and to make clear that it was not being published for the truth, but only for the fact that the statements had been made. As the court concluded in **Jigme Tsewang**,³⁴ “For the above reasons, the key element of attribution is missing in the present case and the defence of reportage is therefore not available.”

[76] I concur with the claimant’s “lack of attribution” argument. The defendants did not make it clear that the article was a reproduction of another’s work. They did not provide evidence to show that “LPCU” was commonly known to readers or that anyone would conclude that it was a repetition of a release by another person or entity. The disclaimer was insufficient as there was no way anyone would be able to identify the article as being authored by someone else not working for the newspaper.

[77] The claimant advances other reasons why the defendants’ reliance on the reportage defence should fail. The claimant submits:

- (a) There was no reciprocity of allegations as required in **Roberts v Gable**, **Al-Fagih**, **Prince Radu** and **Grant v Torstar Corp**. Only the allegation against the claimant was reported.
- (b) It is not possible for the defendants to seek to rely on the defence of reportage while simultaneously relying on **Reynolds** privilege. In **Charman**,³⁵ Sedley LJ (at paragraph 91) appeared to take the view that the defences of reportage and responsible journalism were incompatible in that once a defendant has relied on the defence of reportage, it makes it forensically problematical to fall back upon an alternative defence of responsible journalism. The claimant submits that this would also operate in the other direction. It would be contradictory for a defendant to, on the one hand, state his belief in the truth and accuracy of the impugned statements (responsible journalism) and on the other hand also to

³⁴ *Jigme Tsewang Athoup v Brightec Ltd & Anor* HCA 1693/2011 at para. 92 – Hong Kong

³⁵ *Supra* at note 28; see also *Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd & Ors* [2018] 4 MLJ 209

state that he does not (reportage). The defendants stated in the filed defences that the 1st defendant published the article believing it to be true. It is impossible for the defendants to now say, "We did not believe they were true and did not publish them for that reason, but because it was in the public interest that persons knew that the statements had been made."

- (c) Further (related to the lack of attribution point), no matter how overwhelming the public interest (which the claimant does not admit), it is not reportage simply to report with perfect accuracy and in the most neutral way the defamatory allegations A has uttered of B, as the effect of simply repeating the allegations, without distancing oneself therefrom, is to make the article a report of the truth of the defamatory material, as opposed to it being a report only of the fact that it was said. This is what occurred here when the defendants repeated the article in its precise form without making clear they were not endorsing or adopting it. It became a report of the truth. This falls afoul of the repetition rule.

- [78] For the reasons so thoroughly and more than adequately put by learned King's Counsel for the claimant, I rule that the defendants' reliance on the defence of reportage fails.

Justification

- [79] Justification is a complete defence to a defamation claim. In order to succeed on this plea, the defence must prove the substance of the defamatory words.

- [80] Paragraph 12 of Mr. Cozier's amended defence under the heading '**Justification**' states:

*The 2nd Defendant denies paragraph 9 of the Statement of Claim, that the words complained of by the Claimant in paragraphs 9 and 10 of the Statement of Claim are false, because the only words which refer to the Claimant therein are in the statement which reads that '**It is reported that the Cabinet Secretary [the Claimant] ...eventually signed off on the prime minister's request**', which words are true.'*

- [81] It appears that the defendants are contending that the fact of reporting the words about the claimant is true. The fact of reporting is not the substance of the

defamation here. In the context of the whole article, the substance of the defamation is that the claimant signed off on the prime minister's improper request. The defendants have not produced any evidence to prove the substance or gist of the offending words. Therefore, the defence of justification fails.

Relief

[82] The claimant claims damages including aggravated damages. She did not pursue the claim for exemplary damages. I point out here that the defendants have made no submissions on damages. Therefore the court has had the benefit of the claimant's offerings only on this aspect of the case.

[83] A successful claimant in a defamation claim is entitled to damages. The purpose of an award of general damages in a defamation case is set out in Gatley on Libel and Slander³⁶ where it is stated:

"The purpose of general damages is to compensate the claimant for the effects of the defamatory statement, but compensation here is a more complex idea than it is in the case of injury to person or property by negligence. General damages serve three functions, albeit that the emphasis placed on each will vary from case to case: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including where relevant, his business reputation); and as a vindication of his reputation."

[84] In **John v MGN**,³⁷ involving a newspaper libel of the celebrity Elton John (subsequently Sir Elton John), Sir Thomas Bingham MR highlighted the various factors to be taken into account in awarding general damages for defamation as follows:

"A successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage,

³⁶ Twelfth Edition at para. 9.4

³⁷ [1997] QB 586, 607

loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way."

[85] In **Jones v Pollard and Others**,³⁸ the court set out a checklist of the relevant factors as follows:

- (a) The objective features of the libel itself, such as the gravity, its prominence, the circulation of the medium in which it was published and any repetition.
- (b) The subjective effect on the plaintiff's feelings (usually categorized as aggravating features) not only from the publication itself, but from the defendant's conduct thereafter both up to and including the trial itself.
- (c) Matters tending to mitigate damages, such as the publication of an apology.
- (d) Matters tending to reduce damages
- (e) Vindication of the plaintiff's reputation past and future.

The objective features of the defamation

[86] To the claimant, the libel in this matter was a very serious one. In this regard, the claimant submits as follows:

- a. The claimant at the time occupied the position of Cabinet Secretary in the sitting Government, a very senior position of trust. She had been a career public servant having joined the public service in St. Kitts in 1960 serving in the Supply Office and the Customs Department up to 1970. She then relocated to St. Vincent where she resided for approximately twenty years and was also employed there in the public service, first at Customs & Excise

³⁸ [1997] EMLR 233; see also *Gur v Avrupa Newspaper Ltd & Anor* [2008] EWCA Civ 594

and then as Senior Accounts Clerk General Post Office and finally to Inland Revenue. Having reached the position of Assistant Comptroller of Inland Revenue, she took early retirement and later returned to St. Kitts. She was a member of both the Public Service and Police Service Commissions and rose to be chairperson of both commissions in St. Kitts. She was the St. Kitts & Nevis representative on the Judicial & Legal Services Commission during the previous government administration and was also engaged in the family printing business. She was Cabinet Secretary in the Dr. Timothy Harris led Unity Coalition Government of the Federation of St. Kitts and Nevis from March 2015 to 19th August 2022. She describes herself as an ardent Methodist, an active member of the Kingstown Methodist Church and a choir member for all the years she lived in St. Vincent and has been prominently involved in various activities in her church both there and at her home in St. Kitts. She states that she has been a devout Christian all her life and has striven to set a good example for her children and grandchildren, mentoring young people with whom she comes into contact. To make against such a person any of the allegations contained in paragraph 12 of the statement of claim is a grave libel that goes to the very core of the claimant's character, and touches on her personal integrity, honour, and professional reputation. The award should reflect this.

- b. The article in question was published in a newspaper with wide circulation nationally. The claimant recalled seeing it on sale at a supermarket and her evidence is that after the publication she received several calls including from overseas (St. Vincent) about it. It also had a wide circulation via its website. The article featured a headline in bold "**Media houses requested to investigate payments, relationship**" and a call made by the former Prime Minister for certain investigations to be made, and it is likely that that article was read by many persons.

The subjective effect on the claimant's feelings

- [87] The claimant set out in her witness statement that when the publication and specifically the offending words were brought to her attention, she felt horrified. She thought the words were accusatory, defamatory, and malicious and baseless gossip. She said she felt very much hurt and humiliated. She was hurt and appalled and was convinced that the article would significantly lower her otherwise credible reputation and would have dismantled all that she had tried to establish in both her private and public lives.

Matters to mitigate damages

- [88] The claimant points out that there are no mitigating matters. No apology or retraction was published.

Matters to reduce damages

- [89] The claimant contends that there was no such evidence before the court.

Vindication of the claimant's reputation

- [90] The claimant submits that a successful claimant is entitled to look to an award that not only compensates him or her for the harm to his reputation, but one that vindicates his or her reputation. As Lord Hailsham stated in **Cassell and Company v Broome and Another** ³⁹ "not merely can he [a successful claimant] recover the estimate sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge." According to Mendonca JA in **Guardian Media Limited and Ashwin Creed**,⁴⁰ this assumes greater significance in a case where the defendant seeks to justify the allegation and does not retract the defamatory publication nor issues an apology, as is the case here.

³⁹ [1972] AC 1027 at 1071.

⁴⁰ Civil Appeal No. P022 of 2017 - Republic of Trinidad and Tobago at 71

Aggravated damages

[91] The claimant seeks a substantial award based on the conduct of the defendants. In

Cassell and Company v Broome and Another⁴¹, Lord Reid stated:

“It has long been recognized that in determining what sum within the bracket should be awarded, a jury or other tribunal is entitled to have regard to the conduct of the defendant. He may have behaved in a high handed, malicious, insulting or oppressive manner in committing the tort or he or his counsel may at trial have aggravated the jury by what they say. That would justify going to the top of the bracket and awarding as damages the largest sum that could fairly be regarded as compensation.”⁴²

[92] In this case, the claimant asks the court to consider the following factors to justify an increase in the award or the award being on the high side of the scale:

- (a) The defendants refused to offer an apology and/or retraction as requested by the claimant’s attorney’s letter of 1st March 2016.
- (b) The defendants denied the statements were capable of being defamatory of the claimant.
- (c) The defendants persisted with the defamatory statement, claiming it was fair comment, and maintained same throughout the trial although the 2nd defendant was unable to point the court to any comments by the 1st or 2nd defendant within the article in question.
- (d) The defendants persisted in a claim of Reynolds privilege although they offered no evidence whatsoever of any responsible journalism (of any steps taken to contact the claimant or obtain her side of the story) before publication.
- (e) The defendants persisted in a claim of justification and in cross-examination, the 2nd defendant stated strongly that the 1st defendant believed the article was true.
- (f) Leading up to the trial the defendants, in support of their case that the article was true, sought an order for the court for the joinder of the current Cabinet Secretary in an effort to obtain specific disclosure documentation to prove that the assertions made against the claimant were in fact true. This went even

⁴¹ [1972] 1 All ER p. 825

⁴² Cited in *Anthony Michael Perkins v Leewards Media Group Ltd.* NEVHCV2010/0184 at paragraph 96

further overboard when the information sought also covered who was paying for the claimant's case, inferring again some political mischief. This application was refused by the court.

- (g) The defendants brought two applications to strike out the claim as disclosing no reasonable cause for bringing it and both were dismissed.
- (h) The defendants attempted to change the bases of their filed defences by inserting in the 2nd defendant's witness statement, an alternative case that ventured outside their pleadings, resulting in parts of that witness statement being struck out.
- (i) The 2nd defendant denied that the claimant had suffered any injury or loss as she had retained her job as Cabinet Secretary. The 2nd defendant later said that he accepted that other (non-financial) injury could occur, but said that he saw no evidence of same, in the face of the claimant's witness statement explaining how she felt.

[93] On the factors set out by the claimant, I am of the view that she is entitled to an award of aggravated damages.

The award

[94] The claimant cites, relies on and sets out the following cases showing awards by courts in the region:

(a) **J. N. France and Fitzroy Bryant v Kennedy Alphonse Simmonds** ⁴³

The respondent was the Prime Minister of St. Kitts and Nevis. He acquired a boat for ferry services from St. Kitts to Nevis. An article penned by the second named appellant under the banner "Simmonds Come Clean" suggested that the boat was a gift to the people of the Federation whereas the respondent was saying that the boat was purchased for \$1.5 million. The article also warned Simmonds to come clean about the \$1.5 million. The article by implication was saying that the boat was a gift and Dr. Simmonds was saying that it cost \$1.5 million and therefore pocketed the \$1.5 million.

⁴³ (1990) 38 WIR 172

At first instance Dr. Simmonds was awarded EC\$75,000.00 which award was upheld by both the Court of Appeal and the Privy Council.

(b) **Earl Assim Martin v Democrat Printing Co. and Lorna Callendar**⁴⁴

In an article published in the Democrat newspaper the following words appeared:

“That Assim has been complaining that Muddada and Clerk can’t say anything bad about him because they involve in the drug trade too but Muddada say he ain’t taking no jail for Assim!”

Belle J, as he then was, in awarding damages of \$170,000.00 against the defendants said:

“I award this sum to reflect the aggravated nature of the damage caused to the claimant in light of the defendant’s apparent malice demonstrated by their failure to make a proper apology or to acknowledge the false imputation in the article.”

(c) **Anthony Michael Perkins and Leewards Media Group Ltd**⁴⁵

The claimant was a civil engineer and a Minister of Government in the Nevis Island Administration. In the issue 16th July to 22nd July 2010, the defendant in its newspaper printed and published the following words of the claimant:

“How many poor people who rooted for Michael Perkins in St. Paul’s expected to see this man waste their own tax payers money to the tune of Ten Million Dollars and then explain it away as an honest mistake. The people of New York Town Hall meeting simply asked what the Nevisian people are wondering: Why do we have to dodge pot holes while driving on the most expensive piece of road in Nevis? Michael Perkins has stated that the overpayment was an honest mistake. This raises the other questions relating to who (sic) the overpayment was made to (sic) and whether there is possibility of fraud involved in such an overpayment. In any event after such mistake why would anyone support a candidate who has admitted to wasting US\$10,000,000.00 during his term in government office.”

At paragraph 103 of the judgment the court stated that for the defendant to say that there was a cash overrun of \$10 million, and to say that the claimant admitted to a cost overrun was to say in effect, without lawful justification, that the claimant was an incompetent civil engineer, the

⁴⁴ SKBHCV2004/0136

⁴⁵ NEVHCV2010/0184

claimant was involved in the fraudulent expenditure of \$10 million and implied that he benefitted from the fraud, and was a very serious and malicious attack on the professional reputation of the claimant. The court awarded \$250,000.00 in damages against the defendant.

(d) **Douglas v The Democrat Printing Company Limited**⁴⁶

The court awarded the sum of \$300,000.00 as general damages and \$50,000.00 as aggravated damages to the claimant, the former Prime Minister of Saint Christopher and Nevis, for the publication by the defendant of the defamatory statement alleging that the claimant was corrupt, murdered people for political gain and associated with international criminals. On appeal, the Court of Appeal upheld the award of \$350,000.00 to the claimant.⁴⁷

[95] Based on the foregoing, the claimant submits that an appropriate award would be a total of \$300,000.00 made up of EC\$250,000.00 as general damages and \$50,000.00 as aggravated damages.

[96] The defendants have not provided any authorities on damages to assist the court. Nevertheless, I am of the view that all of the authorities submitted on behalf of the claimant reveal instances of defamation of a more serious character than is evident here. While I recognise the seriousness of the libel alleging the authorisation by the claimant, the most senior officer in the public service, of improper remuneration to two police officers using State funds, in my respectful view, the defamation does not rise to the level in the cases cited.

[97] In **France v Simmonds**, the Prime Minister was implicated in pocketing \$1.5 million. There was an imputation of the claimant's involvement in the drug trade in **Earl Assim Martin v Democratic Printing Co. and Lorna Callendar**. The case of **Anthony Michael Perkins** concerned a government minister and civil engineer, the

⁴⁶ SKBHCV2012/0076, delivered October 8, 2013

⁴⁷ SKBHCVAP2013/0026, delivered October 12, 2016

sting of the libel being that the claimant was incompetent and involved in fraudulent expenditure of US\$10 million. In **Douglas**, the former Prime Minister was implicated in murder, corruption and association with international criminals.

[98] In the circumstances of this case, I consider the sum of \$70,000.00 a reasonable award to the claimant as general damages, and \$30,000.00 as aggravated damages.

Order

[99] Based on the foregoing, it is hereby ordered as follows:

- 1) Judgment is entered in favour of the claimant.
- 2) The defendants whether by themselves, their servants or agents or howsoever otherwise are restrained from the publication of the said defamatory words or any of them or any similar words.
- 3) The defendants shall pay the claimant as follows:
 - i. General damages in the sum of \$100,000.00 inclusive of aggravated damages in the sum of \$30,000.00.
 - ii. Interest at the statutory rate of 5% per annum from the date of this judgment until payment in full.
 - iii. Prescribed costs in the sum of \$20,000.00.

[100] I am grateful to King's Counsel, his junior and learned counsel for the defendants for their most useful submissions.

Tamara Gill
High Court Judge

By the Court

Registrar