

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2017/0377

BETWEEN:

GASTON BROWNE

Claimant

and

LENA PHILLIP

Defendant

Appearances:

Anthony Astaphan SC, with him, Rose-Mary Reynolds for the Claimant
No appearance by or for the Defendant

2023: October 19;
2024: March 7.

DECISION

Introduction

[1] The Claimant commenced defamation proceedings against the Defendant by claim form and statement of claim filed on 10th July 2017. The Claimant is and was at the material time the Prime Minister of Antigua and Barbuda and the Defendant, a calypsonian by the stage name “Queen Ivena”. The Claimant filed an amended claim form and amended statement of claim on 9th November 2017. In his amended claim, the Claimant sought the following reliefs:

- “(a) Damages, including aggravated damages against the Defendant for libels or slanders for the words published and broadcast and/or caused to be published and broadcast by them as mentioned above;

- (b) An injunction restraining the Defendant whether by herself, her servants or agents or howsoever from further publishing or causing to be published the said or similar defamatory words of and about the Claimant;
- (c) Costs on the indemnity basis and/or wasted costs against the Defendant.
- (d) Further or other relief.”

- [2] The Defendant filed a defence to the Claimant’s amended claim on 18th December 2017, denying the Claimant’s claim.
- [3] The claim was case managed by a master and the parties attended pre-trial review before a judge in 2019. For reasons that are unclear, the matter was set to come on for trial on 14th December 2022, more than three years after the pre-trial review. A further pre-trial review was held on 25th November 2022. At the pre-trial review held on 25th November 2022, the 14th December 2022 trial date was vacated and the trial was adjourned to 19th April 2023. Just over two weeks before the adjourned trial date, the Claimant applied to vacate the trial on the basis that he had filed an application on 31st March 2023 to strike out the Defendant’s defence. The adjournment application was granted by the trial judge.
- [4] Thereafter, on 8th May 2023, the Defendant filed an application to strike out the Claimant’s claim as disclosing no cause of action and also applied on even date for the court to determine whether the words complained of by the Claimant were capable of bearing the meaning attributed to them by the Claimant in his amended statement of claim.
- [5] The matter came on for hearing on 10th May 2023. Counsel for both parties were present at the hearing. On that day, the Court case managed all three applications and gave directions for their hearing, mindful of the order in which the applications had been filed. The hearing of the applications was fixed for 6th July 2023. The Defendant failed to comply with the Court’s directions and the Defendant and her counsel failed to attend the hearing on 6th July 2023. With the agreement of counsel for the Claimant, the Court gave a further opportunity

for the Defendant to comply with the court's directions and to attend the hearing of the matter. The Court therefore extended the time for the Defendant to comply with the directions for the hearing of the applications and adjourned the hearing of the applications to 19th October 2023.

[6] When the applications came on for hearing on the adjourned date of 19th October 2023, the Defendant still had not complied with any of the case management directions and did not attend the hearing. The Court was satisfied that counsel for the Defendant had been served with the notice of hearing and had failed to attend the hearing to make any representations to the Court in relation to the applications. The Court therefore proceeded to hear the arguments on behalf of the Claimant on the applications and reserved its decision.

[7] Being mindful of the guidance of Saunders JA [Ag.] in **St. Kitts Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited**¹ and Pereira CJ in **The Attorney General of Saint Lucia v Darrel Montrope**,² I intend to deal with the applications in the order in which they were filed; however, in determining the Claimant's application to strike out the Defendant's defence, I will also consider the question of whether the words complained of by the Claimant are capable of bearing a meaning or meanings attributed to them in his amended statement of claim, which was the basis of one of the two applications filed by the Defendant on 8th May 2023.

The Claimant's Application to Strike Out the Defence

[8] The grounds of the Claimant's strike out application as set out in his notice of application are:

- a. Pursuant to rules 11.3(2), 12.5(i), 26.3(1)(a), (b), (d) of the Civil Procedure Rules 2000 (CPR).
- b. The Defendant's defence has disclosed no reasonable grounds or reasonable defences to the Claimant's action for Defamation.
- c. There is nothing of the Defendant's defence, disclosure, or evidence which is capable of showing or establishing that the words

¹ Saint Christopher and Nevis High Court Civil Appeal No. 6 of 2002 (delivered 31st March 2003, unreported).

² SLUHC VAP2019/0021 (delivered 9th July 2020, unreported).

complained of by the Claimant are true or that she has a viable or reasonable defence to the action.

- d. The Defendant has by paragraph 4 and 5 of its defence, pleaded a bare denial that the words are not capable of the meaning that the Claimant attributed to them, contrary to CPR 10.5(4) and that this is not a proper defence.
- e. The Defendant's defence has failed to plead or show any reasonable grounds for resisting the allegations of the Claimant's statement of claim contrary to CPR 10.5
- f. The Defendant has failed to comply with CPR 10.5(3) as the defence has not stated whether the further allegations in the statement of claim (a) are admitted; (b) are denied; (c) are neither admitted nor denied, because the defendant does not know whether they are true; and (d) the Defendant wishes the claimant to prove; and that this is not a permissible defence.
- g. The Defendant's defence has failed to comply with CPR 69.3 which requires the Defendant to give particulars stating (i) which of the words complained of are alleged to be statements of fact; and (ii) the facts and matters relied on in support of the allegation that the words are true; and that this is an incurably bad pleading.
- h. The defence is incurable bad.
- i. In all the circumstances it is just that the court make the orders sought, the Defendant's statement of case is struck out and judgment be entered for the Claimant on the claim as prayed.

The Claimant's Claim

- [9] The Claimant's case is based on a calypso song performed by the Defendant. At paragraph 3 of his amended statement of claim, the Claimant pleaded that on or about 24th June 2017 at a calypso tent organized by the Peppercot Calypso Tent, and on 8th July 2017 at the quarter finals of the calypso competition held at Barrymore Hotel, the Defendant sang a song called "Nastiness" which included the following words:

"...Hey mama
Nasty nasty lewe clean up dis country
Nasty nasty
Plenty nasty

Ready to rebuild in 2016
De PM started a charity for 5 million of de people's money
With his budget speech, I felt really pleased
It is to help young business women like you and me
But in 2017 man ah bawl
An so ah scream
Cus his budget was nothing
But ah smokescreen..."

"...Ask the PM for de 5 million in his wife's charity
 Dat is nasty
 Nastiness
 When de PM tellin his MP
 Use your post and get rich quickly
 Dis is nasty
 Nastiness

With them nastiness..."

- [10] At paragraph 5 of his amended statement of claim, the Claimant alleged that the words spoken by the Defendant were and are to the knowledge of the Defendant false and at paragraph 6 of his amended statement of claim, the Claimant alleged that in their natural and ordinary meaning, or by way of innuendo, the words complained of meant and were intended to mean that:

- "6.1 The Claimant is guilty of criminal corruption, acted in breach of his fiduciary duties and/or guilty of misfeasance in public office in that as Prime Minister and Minister of Finance he authorized public monies from the Treasury, namely the sum of 5 million dollars, to be paid to his wife's charity or foundation, and not to the Venture Capital Fund, for illegal or improper purposes including personal gain and/or that the monies were used or misused for personal reasons and gain as none of the 5 million was spent by the Foundation or Charity on any person or public purpose.
- 6.2. The Claimant by the alleged words "Use your post and get rich quickly," which are denied, unlawfully encouraged his Members of Parliament and Ministers to corruptly use their public officers for personal gain in breach of the law."

- [11] At paragraph 6.3 to 6.9 of his amended statement of claim, the Claimant pleaded the following particulars of innuendo in relation to the "5 million dollars" and the "charity".

- "6.3 Paragraph 1 above is repeated. The Claimant is and was the Minister responsible for the finances of Antigua and Barbuda;
- 6.4 The Claimant as Minister of Finance is responsible for the finances of the State of Antigua and Barbuda;
- 6.5 On the 5th February 2016 the Claimant as Minister of Finance said in the course of his Budget Address that
 - "Prior to taking over the government of this country we took a decision that we will have Venture Capital funding available for entrepreneurs in our Manifesto and that is how we created this fund of \$2 million and the partnership that is being developed here is that Share will make a half a million available to that fund.

However, since there is so much to say about it and there is so much push back coming from the Members of the Opposition, we have decided to make it a little more exciting. So I am pleased to announce to this Nation that that Venture Capital will be increased from \$2 million to \$5 million.”

- 6.6. The proceedings of the Parliament are broadcast live.
- 6.7. Listeners would understand that the Claimant was not entitled to act in the way alleged in paragraphs 6.1 and 6.2 and to do so would constitute criminal conduct including criminal corruption, breach of his fiduciary duties and/or misfeasance in public office.
- 6.8. The charity reference to by the Claimant is run by the Claimant’s wife.
- 6.9. In the circumstances, the said facts would have been known to a substantial but unquantifiable number of listeners of the words complained of and these listeners would have understood the words complained of to bear the meanings set out at paragraph 6.”

- [12] The Claimant went on at paragraphs 7 and 8 of his statement of claim to plead certain matters in relation to his claim for aggravated damages.

The Defendant’s Defence

- [13] The Defendant filed her defence to the Claimant’s amended statement of claim on 18th December 2017. At paragraph 2 of her defence, the Defendant admitted that she sang a song at the calypso tent and at the quarter finals as pleaded by the Claimant but denied that the words reproduced in the amended statement of claim represented a true reproduction of her song in so far as the words were presented. The Defendant went on to contend at paragraph 3 of her defence that the Claimant has produced 20 lines of the song and alleged that in so doing, he omitted critically important lines from amongst those presented. The Defendant alleged that the actual words of the song were as follows, the underlined words having been omitted by the Claimant:

“Ready to rebuild in 2016, de PM started a charity for 5 million of de people’s money’

With his budget speech, I felt really pleased; it is to help young business women like you and me;
But in 2017, man a bawl so a scream, cause his budget was nothing but a smoke screen.

*He say my dear wife don't want to be no more involved in this charity;
Too much nastiness a spread in de country; so I decided to do like Obsti
and invoke Papa VC

To hear what he had to say to me

He say, "Any government run a country and there's no 'countability, that is nasty, nastiness,

Ask de PM foo de 5 million in his wife charity, that is nasty, nastiness.

When de PM tell his MP, 'use you post an get rich quickly', that is nasty, nastiness".

- [14] The Defendant denied paragraphs 5 of the Claimant's statement of claim where he pleaded that the words spoken by the Defendant were and are to the knowledge of the Defendant false. The Defendant further denied paragraph 6.1 of the Claimant's amended statement of claim concerning the meaning of the words complained of therein in relation to "the 5 million dollars" and the "charity"; and in respect of paragraph 6.2 of the Claimant's amended statement of claim, as to the meaning of the words complained of therein "use your post and get rich quickly", she pleaded at paragraph 6 of her defence that she relies on the words of the Claimant spoken at a groundbreaking ceremony at West Indies Company held in January 2016, where she alleged that the Claimant is reported to have uttered the following words:

"I have said to my colleague Ministers...If you are here to serve and by virtue of your creativity you can enrich yourself I have no problem with that"

- [15] The Defendant went on to state at paragraph 7 of her defence that she has been advised that Ministers of Government are in a position of trust and the Claimant's exhortation to his Ministers is contrary to persons holding such position.

- [16] At paragraph 8 of her statement of claim, the Defendant denied that the song refers to the Claimant's Budget address as Minister of Finance delivered on 5th February 2016. She averred that the words are taken from the Claimant's 2016 Budget Statement delivered on Thursday, 21st January 2016 and reproduced in

the published 2016 Budget Statement at pages 20 and 21. She alleged that she made no reference to anything said by the Claimant on 5th February 2016.

[17] The Defendant denied that the Claimant had been injured in character and that his reputation as Prime Minister and personally, and that of his wife and family had been brought into public scandal, odium and contempt including public ridicule, and pleaded matters which she stated she would rely on to show that the Claimant's reputation had not been injured.

[18] Having set out the pleadings by the Claimant and the Defendant, I will now consider the Court's power to strike out a statement of case in the context of the application that has been brought by the Claimant.

The Court's power to strike out a statement of case

[19] Rule 26.3(1) of the **Civil Procedure Rules 2000** ("CPR") gives the court the power to strike out a statement of case. The rule provides:

"26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

- (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
- (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10."

[20] The Claimant's application to strike has been brought pursuant to CPR 26.3(1)(a), (b) and (d). In making his application, the Claimant has relied on the decision of Thom J in **Dr. Ralph Gonsalves v Edwardo Lynch et al**³ where the learned judge considered a preliminary issue on a defamation claim and formed the view that the court has the power to strike out a defence where it is satisfied that a defendant's case in relation to a particular passage is incurably bad. In the case, Thom J struck out the defendants' pleas of publication, that the words

³ Saint Vincent and the Grenadines Claim no. 406 of 2002 (delivered 7th October 2005, unreported).

complained of did not bear the meanings alleged by the claimant or any defamatory meaning, fair comment on a matter of public interest and qualified privilege.

[21] It seems to me, based on the application filed by the Claimant, the Claimant is inviting the court to strike out the Defendant's defence on the basis that the Defendant's defence is incurably bad, in that the Defendant has failed to comply with CPR Parts 10 and 69, and further that the defence discloses no reasonable grounds for defending the Claimant's claim. Considering this, I am of the view that the Court is required to examine the pleadings to make its determination as to whether the defence ought to be struck out.

[22] The principles guiding the court's power to strike out all or part of a statement of case are well settled and need not be repeated in detail.⁴ It is sufficient to state that striking out a party's statement of case is a drastic step and the power to do so must be exercised sparingly. An important consideration for the Court on the present application was stated by Farara JA [Ag.] in **Ian Hope-Ross v Martin Dinning et al**,⁵ wherein the learned Justice of Appeal set out the principles undergirding the court's jurisdiction to strike out a statement of case. Farara JA [Ag.] stated at paragraph 21(i) of the Court of Appeal's decision that:

"The court must be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the case in the sense that it has no real prospect of succeeding at trial."

[23] One of the contentions made by the Claimant is that the Defendant's bare denials do not create or constitute a valid defence and that the Defendant's

⁴ See: Cedar Valley Springs Homeowners Association Incorporated v Hyacinth Pestaina ANUHCVP2016/0009 heard together with Cedar Valley Sprints Homeowners Association Incorporated v Hilda Meade et al ANUHCVP2016/0010 (delivered 18th January 2017, unreported) at para. 6 and Ian Hope-Ross v Martin Dinning et al AXAHCVP2020/0005 consolidated with Christopher Liss et al v Martin Dinning et al AXAHCVP2020/0006 and Satay Limited et al v Martin Dinning et al AXAHCVP2020/0007 (delivered 30th April 2021, unreported) at para. 21.

⁵ Ian Hope-Ross v Martin Dinning et al AXAHCVP2020/0005 consolidated with Christopher Liss et al v Martin Dinning et al AXAHCVP2020/0006 and Satay Limited et al v Martin Dinning et al AXAHCVP2020/0007 (delivered 30th April 2021, unreported) at para. 21.

multiple breaches of CPR Part 10 provides a further ground for the defence to be struck out.

- [24] In her defence, the Defendant denied that the words complained of by the Claimant bear the defamatory meaning attributed to them by the Claimant in his statement of claim. I believe that in considering the Claimant's strike out application, it would be convenient to address the question whether the words complained of by the Claimant are capable of bearing the defamatory meaning stated by the Claimant in his statement of claim.

Meaning

- [25] It is well settled that the issue of whether words are capable of bearing a defamatory meaning is a matter of law and whether the words do bear a defamatory meaning is an issue of fact.⁶

- [26] CPR 69.4 empowers a judge in chambers to determine whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case. The rule provides:

"69.4 (1) At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just."

- [27] In his statement of claim, the Claimant asserts that in their natural and ordinary meaning or by way of innuendo, the words complained of were defamatory.

⁶ See *France and Bryant v Simmons St. Kitts and Nevis Civil Appeal No. 2 of 1985* at p. 16 and *Dr. Ralph Gonsalves v Edwardo Lynch et al Saint Vincent and the Grenadines Claim No. 406 of 2022* (delivered 7th October 2005, unreported) at para. 28.

[28] In **Rubber Improvement Limited and another v Daily Telegraph Ltd and another**,⁷ the House of Lords explained:

“Where a plaintiff brings an action for libel he may sustain his case (where there is a trial with a jury) if the judge rules that the words, in what has been called their natural and ordinary meaning (or their "ordinary" meaning - see Ord. 19, r. 6 (2)) are capable of being defamatory, and if the jury find that they are defamatory. A plaintiff may, however, sustain his case in a different way. He may plead an innuendo. He may establish that because there were extrinsic facts which were known to readers of the words, such readers would be reasonably induced to understand the words in a defamatory sense which went beyond or which altered their natural and ordinary meaning, and which could be regarded as a secondary or as an extended meaning. The nature of an innuendo (using that word in its correct legal sense) has recently been reviewed in the valuable judgments delivered in the Court of Appeal in *Grubb v. Bristol United Press Ltd*.⁶ A defamatory meaning which derives no support from extrinsic facts but which is said to be implied from the words which are used is not a true innuendo. If there are some special extrinsic facts the result may be that to those who know them words may convey a meaning which the words taken by themselves do not convey.”

[29] In the English case of **Slim v Daily Telegraph Limited**,⁸ Salmon LJ in delivering the judgment of the Court of Appeal opined on the law with respect to innuendo pleaded in a defamation claim. He stated:

“A "true" or "legal" innuendo is a meaning, which is different from the natural and ordinary meaning of the words, and defamatory because of special facts known to those to whom the words are published. The ordinary meaning and innuendo give rise to different causes of action, and, accordingly, must be pleaded separately.”

[30] A claimant who alleges a defamatory meaning by way of innuendo must plead the special meaning he contends the words have and plead and prove the facts upon which the meaning is based. The meaning resulting from innuendo gives rise to a separate cause of action from that of any that arises from the words in their natural and ordinary meaning. This is so because the extended meaning is not present in the words themselves.⁹

⁷ [1964] AC 234 at p. 264.

⁸ [1968] 2 QB 157 at p. 183

⁹ See Gatley on Libel and Slander at para. 3.17.

Natural and Ordinary Meaning

- [31] The natural and ordinary meaning of words includes an implied or inferred meaning which the words would convey to an ordinarily reasonable man. In **Jones v Skelton**,¹⁰ Lord Morris explained the concept of the natural and ordinary meaning as follows:

“The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (See *Lewis v. Daily Telegraph, Ltd.* (6)). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.”

- [32] In **Lewis v Daily Telegraph**,¹¹ Lord Reid after quoting a passage of Lord Halsbury in *Nevill v Fine Art & General Insurance Co. Ltd*, stated the test when considering whether words are capable of bearing a defamatory meaning as follows:

“In this case it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.”

- [33] **Dr. Ralph Gonsalves v Kelvin Gibson**,¹² Alleyne J adopted the approach set out by Lord Bingham MR in **Skuse v Granada Television Limited**¹³ to the question of whether the words complained of were capable of the defamatory meaning contended by the claimant.

¹⁰ [1963] 3 AER 952 at p. 958.

¹¹ [1964] AC 234.

¹² *St. Vincent and the Grenadines Suit No. 405 and 406 of 2002* (delivered 31st October 2005, unreported).

¹³ [1996] EMLR 278 at p. 285.

“(1) “The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable person watching the programme once ...

(2) The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not averse for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.

(3) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue.

(4) The court should not be too literal in its approach.

(5) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.

(6) In determining the meaning of the material complained of the court is not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words.

(7) The defamatory meaning pleaded by the plaintiff is treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear.

(8) The court is not at this stage concerned with the merits or demerits of any possible defence

[34] Applying these principles to the present case, as it relates to the words complained of at paragraph 6.1 of the Claimant’s statement of claim, the Claimant ascribes a specific defamatory meaning to the words complained of. I find that in their natural and ordinary meaning, the words complained of are not capable of bearing the meaning that “the Claimant is guilty of criminal corruption, acted in breach of his fiduciary duties and/or guilty of misfeasance in public office in that as Prime Minister and Minister of Finance he authorized public monies from the Treasury, namely the sum of 5 million dollars, to be paid to his wife’s charity or foundation, and not to the venture capital Fund, for illegal or

improper purposes including personal gain and/or that the monies were used or misused for personal reasons and gain as none of the 5 million was spent by the Foundation or Charity on any person or public purpose.”¹⁴ This extended meaning does not arise from the words themselves. However, considering the particulars of innuendo pleaded by the Claimant, I am of the view that the words complained of are capable of bearing the meaning attributed by the Claimant by way of innuendo. That is not to say however, that in their natural and ordinary meaning the words are not capable of bearing other meanings, but it would be straining to impute the breadth of meaning the Claimant ascribed to the words complained of in their natural and ordinary meaning.

[35] I find that in relation to the words complained of at paragraph 6.2 of the Claimant’s statement of claim, in their natural and ordinary meaning or by reasonable inference, within the range of meanings the words are capable of having, the words complained of are capable of bearing the meaning that the Claimant by the alleged words “unlawfully encouraged his Members of Parliament and Ministers to corruptly use their public office for personal gain in breach of the law”.¹⁵ It is noted that the Claimant pleaded no extrinsic facts or reliance on general knowledge to support any innuendo derived from those words and would thus only be able to rely on the natural ordinary meaning of the words.

[36] Although I have reached my conclusions on whether the words complained of are capable of bearing the meaning attributed to them by the Claimant in his statement of case, the question whether the words do bear a defamatory meaning is to be answered at the trial of the matter.

Requirements under CPR Part 10

[37] The Claimant submits that the Defendant’s defence does not comply with the provisions of CPR Part 10.5 and should be struck out.

¹⁴ Paragraph 6.1 of the amended statement of claim.

¹⁵ Paragraph 6.2 of the amended statement of claim.

[38] CPR 10.5 relates to a defendant's duty to set out its case. CPR 10.5(3), (4) and (5) provide:

“(3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim –
(a) are admitted;
(b) are denied;
(c) are neither admitted nor denied, because the defendant does not know whether they are true; and
(d) the defendant wishes the claimant to prove.
(4) If the defendant denies any of the allegations in the claim form or statement of claim –
(a) the defendant must state the reasons for doing so; and
(b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.
(5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not –
(a) admit it; or
(b) deny it and put forward a different version of events;
the defendant must state the reasons for resisting the allegation.”

[39] As was stated by Michel JA in **Philomen Nixon et al v Joseph Nixon aka Paswoe**,¹⁶ the 8 sub-rules of CPR 10.5 set out the requirements which must be complied with to render a defence valid. The learned Justice of Appeal went on to note that: ‘All of the requirements are expressed in mandatory terms by the use of the word ‘must’ and are set out in separate provisions, leaving no doubt that they are both mandatory and conjunctive requirements.’

[40] Upon an examination of the Defendant's defence, there are instances where the Defendant has not strictly complied with the provisions of CPR 10.5. When CPR 10.5(4) is considered, if a defendant denies an allegation, they must state the reasons for their denial and if they intend to prove a different version of events from that given by the claimant, they must set out their own version in the defence. However, it is important to note that CPR 10.5(5). In **Philomen Nixon**, Michel JA accepted in relation to the respondents to the appeal (defendants in the court below) that:

“Compliance with sub-rule (5) may have been achieved, even without having admitted or denied the allegations in the claim form or statement

¹⁶ DOMHCV2018/0005 (delivered 21st September 2022, unreported) at para 13.

of claim, if the respondents had stated in the defence the reasons for resisting the allegations, but this was not done”.

- [41] In response to the Claimant’s allegation that the words complained of were and are to the knowledge of the defendant false, the Defendant pleaded a bare denial and did not there state the reasons for her denial of the Claimant’s allegation. However, the Defendant later pleads matters in her defence which clearly give reasons for resisting this allegation by the Claimant.
- [42] Similarly, in relation to the Claimant’s pleadings as to what the words complained of meant and were understood to mean, the Defendant pleaded a bare denial to the Claimant’s pleading at paragraph 6.1 of the amended statement of claim, giving no reasons therein for the denial. However, at paragraph 8 of her defence the Defendant pleads matters which aim to resist the Claimant’s allegations.
- [43] As it relates to the Claimant’s pleading at paragraph 6.2 of his statement of claim as to what the words complained of pleaded there meant and were understood to mean, the Defendant does not say whether the allegations are admitted, are denied, or are neither admitted nor denied, because the defendant does not know whether they are true. Instead, the Defendant pleads that she relies on the words spoken at a groundbreaking ceremony at West Indies Company held in January 2016. Thus, even though the Defendant appears not to have explicitly admitted or denied the allegations pleaded in the statement of claim, the Claimant has set out reasons for resisting the allegation.
- [44] In relation to the particulars of innuendo, the Defendant at paragraph 8 of her defence, denies the assertions of the Claimant and has pleaded matters to resist the facts pleaded by the Claimant.
- [45] At paragraphs 7 and 8 of his statement of claim, the Claimant pleads matters in relation to his claim for general and aggravated damages. In response, the Defendant denied that the publication of the words complained of injured the Claimant’s character and reputation and the other matters pleaded at paragraph

7 of his statement of claim and thereafter set out her reasons for her resisting the Claimant's allegations.

- [46] The Defendant however has not responded to the matters pleaded at paragraph 8 of the Claimant's statement of claim save an except for her catchall denial at the end of her defence. These pleadings at paragraph 8 of the statement of claim relate to the Claimant's claim for general and aggravated damages. In my view, the Defendant, having failed to respond to the matters pleaded by the Claimant on this issue relating to damages, will have to bear the consequences of CPR 10.7, which provides that:

"Consequences of not setting out defence

10.7 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."

- [47] There is no doubt that in respect of paragraph 8 of the Claimant's statement of claim, the Defendant has not complied with the provisions of CPR Part 10 as the Defendant has not set out any facts on which she relies on to dispute the allegations made by the Claimant at paragraph 8 of his statement of claim. However, in my view, these are matters that the Claimant has pleaded in relation to the issue of quantum. I do not believe that the Defendant, having failed to plead in her defence any allegations or facts on which she relies on in resisting the Claimant's allegations at paragraph 8 of his statement of claim, should warrant her defence being struck out. As I have noted, the Defendant would likely be met with opposition if she seeks to rely on any evidence at the trial of this matter to resist the allegations in relation to quantum that are not based on the matters pleaded in her defence. This, however, in my view does not render the entire defence incurably bad necessitating it being struck out, especially where it does not go to the heart of the issue of liability.

- [48] At the end of this decision, I will summarize my findings and conclusions on the matter as it relates to whether the Defendant's defence ought to be struck out. I will now go on to consider the other aspect of the Claimant's strike out application.

Defences to Defamation Disclosed on the Defendant's Defence

[49] The Claimant has further submitted that the Defendant's defence, which covers approximately three pages, has failed to properly disclose any defence to the Claimant's claim of defamation.

[50] Having examined the Defendant's defence, it would seem to me that by paragraph 10 of her defence, the Defendant has sought to plead the defence of fair comment. At paragraph 10 of the defence, the Defendant states:

"The Prime Minister is a public figure and the song has been composed from statements uttered by the Claimant himself. As Prime Minister the positions he holds on matters affecting the nation are of utmost importance and open to public scrutiny and public comment."

Fair Comment

[51] The defence of fair comment is a complete defence to an action for libel or slander where the words complained of are honest or fair comment on a matter of public interest.¹⁷ The defence has been codified in the **Defamation Act, 2015**.¹⁸ The provisions relating to fair comment and public interest are set out at sections 21 and 22 of the **Defamation Act**:

"21. Defence of fair comment; truth of assertions

(1) In an action for defamation in respect of words, including or consisting of expression of opinion, a defence of fair comment shall not fail only because the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation for the opinion.

(2) Nothing in this section affects the liability of the defendant in an action for defamation for the acts of his employees.

22. Publication on a matter of interest

(1) It is a defence to an action for defamation for the defendant to show that—

(a) The statement complained of was, or formed part of, a statement on a matter of public interest; and

¹⁷ See Gatley on Libel and Slander 12th Edn. at para. 12.1.

¹⁸ Act No. 7 of 2015.

(b) The defendant reasonably believed that publishing the statement complained of was in the public interest.”

[52] In **Vere Bird III v Gaston Browne**,¹⁹ a post **Defamation Act** decision, Byer J explained the defence of fair comment as follows:

“For the Defendant to avail himself of this defence he must however show that the words are comments and not statements of facts. They must also show that there is a basis, which is some allusion, to the facts underpinning the comment, that it is based on facts that are true or protected by privilege and the comment is one that is objectively fair in that an honest and fair-minded person could hold that view. “The defence is not in- applicable because the comment was prejudiced or exaggerated or “unfair” in the ordinary sense of the word”²⁹ (Abraham Mansoor and ors v Grenville Radio Ltd ANUHCv 2004/0408 per Blenman J (as she then was) at paragraph 102) and finally the comment must be on something that is of public interest. That is, “one which has been expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern.”³⁰ (Abraham Mansoor Ibid paragraph 102).”

[53] A defendant who pleads the defence of fair comment must establish all the requirements of the defence. These requirements were discussed in detail by Thom J in **Dr. Ralph Gonsalves v Edwardo Lynch et al.**²⁰ The learned judge, relying on the decisions of Byron JA in **Learie Carasco v Neville Cenac** and Lord Nichols in **Tse Wai Chun Paul v Albert Cheng**,²¹ stated the following as the five ingredients of the defence:

- (1) The comment must be a matter of public interest.
- (2) The comment must be recognizable as comment as distinct from an imputation of fact.
- (3) The comment must be based on facts which are true or protected by privilege.
- (4) The comment must explicitly or implicitly indicate at least in general terms what were the facts on which the comment was made.
- (5) The comment must be one which could have been made by an honest person, however prejudicial he might be and however exaggerated or obstinate his views. It must be germane to the subject matter criticized.”

¹⁹ ANUHCv2019/0683 (delivered 27th April 2023, re-issued 4th May 2023) at para. 63.

²⁰ Saint Vincent and the Grenadines Claim No. 406 of 2002 (delivered 7th October 2005, unreported).

²¹ [2001] EMLR at p. 777.

[54] I believe that the guidance from these cases still remains useful for the Court's consideration of fair comment under the **Defamation Act**.

[55] The learned authors of **Gatley on Libel and Slander**²² in describing comment stated:

"More accurately it has been said that the sense of comment is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc."

[56] In short, to be a comment the words must be based on true facts made honestly on a matter of public interest. A critical point is that the words must be comment, not a statement of fact, although an inference of fact from other facts may amount to a comment.²³

[57] This principle was explained in **Gatley on Libel and Slander**:²⁴

"It is clear that a comment may consist of an inference or deduction of fact that is an author can assert as his comment on facts stated or referred to if he publishes, some other fact the existence of which he infers or deduces from those facts. Thus if the author sets out facts in relation to the Claimant's conduct and states that his inference from those facts is that the Claimant must have been bribed so to act his statement will fall within the defence."

[58] With the above principles in mind, I will consider the words complained of by the Claimant.

[59] There are two specific aspects of the song that the Claimant takes issue with. Firstly, the words "De PM started a charity for 5 million of de people's money...Ask the PM for de 5 million in his wife's charity...Dat is nasty...". Secondly, the Claimant takes issue with the words: "When the PM telling his MP use your post and get rich quickly. Dis is nasty".

²² 10th Edn. Sweet & Maxwell 2004.

²³ See: Abraham Mansoor et al v Grenville Radio Limited et al ANUHCv2004/0408 (delivered 12th October 2007, unreported) at para. 102.

²⁴ At para. 12.10.

[60] In my view, the words complained of can be considered comment. When one considers that Defendant's defence, the Defendant is asserting that the words complained of in her song are in relation to statements allegedly made by the Claimant. She gives the factual bases for this assertion and in essence is asserting that her song "Nastiness" is a comment on those statements. Essentially, the Claimant has set out alleged facts in relation to the Claimant's alleged conduct and is asserting that her song is her inference based on those alleged facts or indeed her comment on those alleged facts she sung in the song.

[61] It remains the case however that for the Defendant to successfully rely on the defence of fair comment, she must successfully make out all the ingredients of the defence at the trial of the matter.

[62] It is also important to consider whether the Defendant has made a proper plea of fair comment pursuant to CPR 69.3. The rules states that:

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

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

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

(c) pleads to like effect;

must give particulars stating –

(i) which of the words complained of are alleged to be statements of fact; and

(ii) the facts and matters relied on in support of the allegation that the words are true."

[63] Part 69.3 requires that a Defendant who makes a plea of fair comment, must give particulars of the facts upon which the comment is made and the matters that the Defendant relies on to show that the allegations are true. It seems to me that in relation to the "5 million dollars" and the "charity" the facts that the Defendant seeks to rely on pertain to the matters pleaded at paragraph 8 of her defence, that the words complained of are taken from the Claimants 2016 budget statement delivered on Thursday, 21st January 2017 and reproduced in

the published 2016 budget statement at page 20 and 21. Further, the Defendant's contention at paragraph 10 of her defence that the words were allegedly spoken by the Claimant himself.

[64] In relation to the words "use your post and get rich quickly" the Defendant seems to be relying on the matters pleaded at paragraph 6 of her defence that the Claimant uttered the words at a groundbreaking ceremony and accordingly, that the words were allegedly spoken by the Claimant himself.

[65] Although not elegantly pleaded, I am of the view that the Defendant has sought to plead a defence of fair comment in accordance with CPR 69.3. Therefore, I consider that the Defendant has sufficiently pleaded matters to enable her to advanced a defence of fair comment.

[66] It is noted that one of the grounds advanced by the Claimant in his strike out application is that there is nothing in the Defendant's defence capable of showing or establishing that the words complained of by the Defendant are true.

[67] Having considered the Defendant's defence, it appears that in resisting the Claimant's allegations, the Defendant is contending that the words complained of by the Claimant could not carry a defamatory imputation because they refer to statements from the Claimant himself. Further, the Defendant has pleaded facts to seek to establish the statements were made by the Claimant. This appears to me to also leave open to the Defendant the defence of truth pursuant to section 20 of the **Defamation Act**.²⁵ The point however was not argued, and I therefore refrain from discussing it further, but it does have bearing in so far as exercising restraint in deploying the Court's strike out powers.

[68] Considering all of the above, I believe it would be improper to strike out the Defendant's defence.

²⁵ See also: *Gaston Browne v Isaac Newton* ANUHCVP2020/0028 (delivered 13th January 2022, unreported) and *Vere Bird III v Gaston Browne* ANUHCVP2019/0683 (delivered 27th April 2023; re-issued 4th May 2023, unreported); and.

The Defendant's application to strike out the Claimant's Amended Statement of Claim

Whether the Claimant has a viable claim

[69] For the sake of completeness, I will now consider the Defendant's application filed on 8th May 2023 to strike out the Claimant's statement of claim. Despite no written submissions having been filed by the Defendant, and the Defendant and her legal counsel failing to attend the hearing to argue her application, learned Senior Counsel for the Claimant filed written submissions in response to the Defendant's application and fully argued the application at the Court's hearing of the matter.

[70] The Defendant's application to strike out the amended statement of claim was made on the following grounds:

- "(a) Pursuant to 26.3 (1)(b) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (CPR).
- (b) The Claimant's Amended Statement of Claim has provided no legal cause of action upon which to base the Claim.
- (c) The Claimant in the prayer has claimed as follows:
 - "Damages, including aggravated damages against the Defendant for libels or slanders for the words published and broadcast and/or caused to be published and broadcast by them as mentioned above".
- (d) In 2015 the Defamation Act (No. 7 of 2015) was passed by the Parliament of Antigua and Barbuda repealing the Libel and Slander Act Cap. 248 of the Laws of Antigua and Barbuda. With the enactment of the Defamation Act 2015 the former torts of libel and slander were abolished and replaced by the tort of defamation.
- (e) With the coming into existence of the Defamation Act 2015 any relief for a defamatory statement must be based on the tort of defamation and not the former torts of libel and slander.
- (f) The Claimant's claim for relief for libel and slander has therefore not disclosed a legal cause of action and of necessity must be dismissed.
- (g) In the circumstances, the court should grant the order as prayed in this Application and strike out the Amended Statement of Claim."

[71] The **Defamation Act** came into effect on 14th April 2015. Section 5 of the **Defamation Act** provides:

- “(1) This Act relates to the tort of defamation.
(2) Except to the extent that this Act provides otherwise expressly, this act does not affect the operation of the law relating to the tort of defamation.”

[72] Section 6 of the **Defamation Act** provides that:

“The distinction at law between slander and libel is abolished.”

[73] Section 9 of the **Defamation Act** is also noteworthy. It states:

“The tort of defamation is actionable without proof of special damage.”

[74] The essence of the Defendant’s application, as I understand it, is her contention that with the enactment of the **Defamation Act**, and the repealing of the **Libel and Slander Act**,²⁶ the torts of libel and slander were abolished and replaced by the tort of defamation, and that the Claimant, by seeking relief for libel and slander rather than for defamation, has not disclosed a legal cause of action against her.

[75] Learned Senior Counsel for the Claimant submitted that whilst the **Defamation Act** has abolished the **Libel and Slander Act**, the common law torts of libel and slander were not abolished. Learned Senior Counsel submitted that the **Defamation Act** has only sought to abolish any distinction between both torts at law, and for all intents and purposes, the tort of libel and slander are one and the same and not abolished.

[76] Learned Senior Counsel drew the Court’s attention to the judgment of the High Court in **Isaac Newton v Gaston Browne**,²⁷ wherein the learned High Court Judge noted:

“It is to be noted that in Antigua and Barbuda the law with respect to defamation has been codified within the provisions of Defamation Act 2015 [the Act]. Section 5 of the Act provides that the Act does not affect the operation of the law relating to the tort of defamation except to the extent that the Act provides.”

²⁶ Cap. 248, Laws of Antigua and Barbuda.

²⁷ ANUHCv2017/0385 (delivered 30th June 2020, unreported) at para. 7.

[77] Learned Senior Counsel further pointed out that the case of **Isaac Newton v Gaston Browne** was a claim for damages for libel filed in 2017 and was not barred due to the claim being brought for libel, and similarly, **Mary John v Cliff Williams**,²⁸ a claim instituted in 2016, was a claim based in libel and was not barred. The Court notes that the judgments in both of these claims were appealed, and the appeals were allowed by the Court of Appeal and the claims remitted to the High Court for retrial. However, the appeals were not allowed on the basis that the claimants in those cases were seeking relief for libel and there was no contention by the Court of Appeal that the claims were not properly instituted.

[78] I am in complete agreement with the submissions of learned Senior Counsel for the Claimant. The effect of the passing of the **Defamation Act** was to abolish the distinction at law between libel and slander and to codify the law of defamation and in so doing the **Libel and Slander Act** was repealed, but libel and slander as types of defamatory statements were not abolished. Further, the **Libel and Slander Act** which has been repealed, only provided for certain matters relating to libel and slander and did not replace the common law rules relating to libel and slander.²⁹

[79] There are two types of defamatory statements: libel and slander. In **Dr. Edmond Mansoor v Eugene Silcott**,³⁰ Michel J, citing the authors of Gatley on Libel and Slander, explained the law of defamation as follows:

““Defamation”, according to Gatley on Libel and Slander, “is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the claimant. Broadly speaking, if the publication is made in permanent form...it is libel; if in some transient form, it is slander. The most important distinction between the two is that libel is actionable per se – the law presuming damage will flow from it; for the publication of a slander to be actionable, on the other hand, some special damage must be proved to flow from it, unless it falls within certain specified categories.”

²⁸ ANUHCv2016/0356 (delivered 5th March 2020, unreported).

²⁹ See *Myrna Liburd v Lorna Hunkins* ANUHCv2010/0209 (delivered 1st March 2012, unreported) and the equivalent provision in St. Kitts and Nevis.

³⁰ ANUHCv2010/0209 (delivered 1st March 2012, unreported) at para. 6.

[80] The two types of defamatory statements were also explained by Blenman JA in **Myrna Liburd v Lorna Hunkins**:³¹

“[39] It is settled law that there are two types of defamatory statements namely: Libel is a defamatory statement in a permanent form. Most usually consisting of written words in a newspaper, book or pamphlet. Slander on the other hand is a defamatory statement in a transient form. The law in relation to slander and libel protects a person’s general reputation. **The main distinction between the two is that libel is actionable without any proof of special damages since the law presumes that damage had been caused to the claimant’s reputation and will be awarded damages.** For the publication of a slander to be actionable, on the other hand, some special damages must be proved to flow from it, unless it falls within the specified exceptions. Any other imputation which may tend to lower the claimant in the estimate of right-thinking members of society generally or to expose him or her to hatred, contempt or ridicule is defamatory of him or her.

[40] As a general rule, in slander, the claimant has no cause of action, unless he can show he has suffered actual damage. However, there are exceptions to the general rule that, at common law, where slander is actionable without proof of damage.” (Emphasis added).

[81] In my view, the **Defamation Act** has simply abolished the bifurcated treatment of libel and slander as it relates to proof of special damage. Section 6 of the **Defamation Act** explicitly provides that the tort of defamation is actionable without proof of special damage. However, at common law, whilst libel was actionable without proof of any special damage, to have a cause of action for slander the claimant had to show they suffered actual damages except where it fell within one of the common law exceptions. The abolished **Libel and Slander Act** for the most part did not alter the common law position.

[82] As was stated by Lord Sumpton in **Lachaux v Independent Print Ltd and another**:³²

³¹ At para. 39.

³² [2019] UKSC 27 at para. 6.

“The law does not presume injury to reputation by mere oral statements and treats injury to feelings as insufficient to found a cause of action. Special damage, representing pecuniary loss rather than injury to reputation, must be proved: see *McGregor on Damages*, 20th ed (2017), paras 46.002, 46.003; *Gatley on Libel and Slander*, 12th ed (2013), para 5.2. The interest which the law protects in cases where a defamatory statement is actionable per se differs from that which it protects in other cases. The gist of the tort where the statement is not actionable per se is not injury to reputation but, as Bowen LJ observed in *Ratcliffe v Evans* [1892] 2 QB 524, 532, wrongfully inflicted pecuniary loss: cf *Jones v Jones* [1916] 2 AC 481, 490 (Viscount Haldane). Indeed, it is an open question, which has given rise to conflicting dicta, whether general damage is recoverable at all in such cases.”

[83] As stated above, with the passing of the **Defamation Act**, this distinction at common law is abolished and both types of defamatory statements, libel and slander, are actionable without proof of special damage. In my view, the Claimant having commenced proceedings against the Defendant, seeking reliefs for libels or slanders for the words published and broadcasted and/or caused to be published and broadcast, is not barred by the **Defamation Act** from maintaining the proceedings, because the recognition at common law of the two types of defamatory statements has not been abolished. It is noted however that the **Defamation Act** has explicitly abolished criminal libel (section 7).

[84] In light of the foregoing, I am of the considered view that the Defendant’s strike out application is without merit and should accordingly be refused.

Conclusion

[85] In summary, I am satisfied that the Defendant has sufficiently pleaded matters which she can rely on to mount a defence to the Claimant’s claim. Whilst there may be instances in her defence where she has not fully complied with the requirements of CPR 10.5, I am of the view that this does not materially affect the viability of her defence and her defence is not incurably bad. The Defendant’s defence has been sufficiently pleaded to enable the Claimant to know the nature of the defence or defences she is seeking to advance. Whether the Defendant proves the matters in her defence is an issue for trial. This is

sufficient to militate against the use of the court's exceptional powers to strike out the Defendant's statement of case.

[86] Having found that the Defendant's defence is not incurably bad and that it discloses the basis of a defence to the Claimant's claim, I would decline to exercise the nuclear option of striking out the Defendant's defence. In considering the Claimant's strike out application, I have also found that the words complained of by the Claimant are capable of bearing the meanings attributed to them by the Claimant in his statement of claim. Whether the words are in fact defamatory would be a matter for the trial of that matter. I have further found that the Claimant's claim is a viable claim, recognized in law as a defamation claim and should not be struck out as disclosing no cause of action against the Defendant.

[87] I wish to make one closing observation. This claim was filed over six years ago in 2017. The Court noted that the parties were at the doors of the trial of the matter in April 2023, all case management and pre-trial review directions having been complied with. The matters arising on these applications could have been raised earlier in these proceedings. At this stage, the parties should determine whether they wish to have the matter settled amicably, or otherwise proceed to trial to bring these proceedings to an end. The Court will therefore order that the parties attend a case management conference so that consequent orders can be made to see the matter through to its final resolution and disposition.

Costs

[88] As it relates to the matter of costs, considering the conduct of the Defendant in relation to the hearing of these applications and considering that both parties have enjoyed a measure of success, I would make no order as to costs.

Disposition

[89] In light of the foregoing, I would make the following orders:

- (1) The Claimant's application filed on 31st March 2023 to strike out the Defendant's defence is refused.

- (2) The Defendant's application filed on 8th May 2023 to strike out the Claimant's amended statement of claim is refused.
- (3) The words complained of by the Claimant are capable of bearing the meanings attributed to them in the Claimant's statement of case.
- (4) There shall be no order as to costs.
- (5) The matter shall be set down for further case management on a date to be fixed by the Registrar of the High Court on notice to the parties.

[90] I wish to thank learned Senior Counsel and his learned junior counsel, for the helpful oral and written submissions on behalf of the Claimant.

Carlos Cameron Michel
Master

By the Court

Registrar