

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
Civil Division

FEDERATION OF ST CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT

Claim No: SKBHCV2022/0175
formerly SKBHCV2016/0146
BETWEEN:

JOSEPHINE HUGGINS

Claimant

-and-

[1] SKN CHOICE TIMES LIMITED
[2] DWIGHT COZIER

Defendants

Before Master Alvin Pariagsingh

Appearances: Anthony E. Gonsalves KC leading and Chauntelle Hobson for the
Claimant; and
M. Angela Cozier for the Defendants.

2023: April 21
May 15.

JUDGMENT
Defendants' application to strike out

INTRODUCTION:

[1] PARIAGSINGH, M: - Before the Court is the Defendants' application to strike out this claim¹. The crux of the dispute between the parties is an allegation by the Claimant that she was defamed in January 2016².

¹ Filed on March 22, 2023

² Paragraph 9 of the Statement of Claim

THE APPLICATION:

- [2] This application was made 56 days after trial directions were given by this Court. Eighteen grounds in support of the application were relied on. These grounds can be conveniently summarised as; the Defendants contends that through an order for specific disclosure made by a previous Master, documents were disclosed that proves that the Claimant has sued the wrong parties.
- [3] The First Defendant contends that these documents disclosed prove that it was merely a holding company of Leeward Media Group Limited and it is trite law that as a holding company the First Defendant has no liability in libel for the SKN Leewards Times Newspaper. It is on this premise the First Defendant contends that the Statement of Claim discloses no grounds for bringing a claim against it.
- [4] The Second Defendant contends that he has adduced evidence that he personally checked the records of the First Defendant and he could not locate any contract between the First Defendant and any Editor. Further he contends that he also adduced evidence that he has personally checked with the Director of Social Security and the First Defendant has no records of filing there. As such he contends that he too is a wrong party to this claim.
- [5] Finally it is contended by the Defendants that seven (7) years has passed since the alleged cause of action arose. As such the Defendants contend that the Claimant is barred by statute from bringing any action in libel against the Leewards Media Group Limited who they contend ought to have been sued.

PRELIMINARY POINT:

- [6] At the penultimate hearing of this matter, Counsel for the Claimant inquired how the Court intended to treat with the affidavits filed in support of and in opposition to this application.

[7] The Court indicated it intended to disregard the affidavits filed in support of and in opposition to the application.³ The Court indicated that it was bound by the decision of the Court of Appeal in *Dr. Martin Didier et al v Royal Caribbean Cruises Ltd*⁴ at paragraph 24 of which Pereria CJ stated:

‘24. On the other hand, an application for a party’s statement of case to be struck out pursuant to CPR 26.3(1)(b) is decided by the court solely on the parties’ pleaded cases before it. No additional evidence is adduced. All facts pleaded in the statement of case are assumed to be true for this purpose’

[8] Counsel for the Defendants sought to hinge her arguments on the evidence adduced in support of this application. Applications to strike out simply are not determined on evidence. This is not an application for summary judgment or for determination of a preliminary point. The application quite clearly states that it is made pursuant to Part 26 Rule 26.3 (1)(b)(c) of the Civil Procedure Rules 2000 as amended.

[9] As such the Court had no regard to any of the affidavits filed in support of or in opposition to the application or any submission made based on the evidence. This is despite Counsel for the Defendants still seeking to make reference to the affidavits at the hearing.

THE APPLICABLE PRINCIPLES:

[10] The Defendants rely on Part 26 Rule 26.3 (1)(b) and (c) CPR⁵ which states:

‘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).....

³ Recited in the order of this court made on March 23, 2023.

⁴ Consolidated Civil Appeals Nos: SLUHCVP2014/0024 & SLUHCVP2015/0004

⁵ Reference was also made to Rule 1.1 and 1.2 CPR. These however are not rules that deal with the Court’s power to strike out. These rules deal with the overriding objective.

(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”

[11] It is now well settled that the draconian sanction of striking out a party’s statement of case will only be deployed as a last resort. This position was restated by Thom JA in *Agnes Danzie et al v Cecil Anthony* ⁶at paragraph 13 where it is stated:

“It is a well-established principle that the court’s power to strike out a statement of case should only be used sparingly (*Real Time Systems Limited v Renraw Investments Limited and Others* [2014] UKPC 6). Also, in *Salfray Hussain v Birmingham City Council and Others* the English Court of Appeal, in considering the exercise of discretion to grant relief from sanctions where judgment was entered in default, stated: ‘it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective’. In exercising his discretion, the learned judge was required to consider what was the appropriate response having regard to all of the circumstances, including whether there were other alternatives available that would be just in the circumstances.”

ANALYSIS:

[12] The crux of the application is that the Defendants are not the correct parties to this defamation claim. *Gatley on Libel and Slander*⁷ sets out generally who may be sued for defamation. It states:

‘Where several persons are jointly concerned in the publication of a libel they may all be joined as co-defendants, or any of them may be sued separately. If the claimant elects to sue one of them separately, it is no defence that others are jointly liable with him, nor will such fact mitigate the damages recoverable. Judgment against the one defendant will not bar the claimant from bringing an action or actions against any other person or persons who joined in the publication which produced the damage...’

⁶ SLUHC VAP2015/0009

⁷ 12th Edition at page [284]

[13] The pleaded case against the First Defendant is⁸:

- '2. The First Defendant is a company incorporated under the Companies Ordinance of Nevis with its registered office situate at Ramsbury, Charlestown Nevis. The First- Named Defendant was at all material times the publisher and/or printer and/or operator and /or proprietor of the SKN Leeward Times Newspaper (hereinafter "the Newspaper"), a newspaper which operates from within the island of Nevis and which had a large circulation within the Federation of St. Christopher and Nevis in which Federation the Claimant resides.'

[14] This too is a disputed fact that cannot be resolved in an application to strike out. It can only be resolved at a trial.

[15] The First Defendants now contends that it is a holding company with no liability for the newspaper.

[16] At this stage, this Court is not called upon to make any findings of fact. This Court is not tasked with resolving who was the owner of or responsible for the newspaper. All this Court has to determine is, if on the pleaded case grounds are disclosed for the brining of a claim.

[17] In so far as there is a dispute that can only be resolved by evidence, which is not for resolution at this stage, and there is a legal basis to sue an editor and/or publisher in defamation proceedings, there is disclosed on the pleadings sufficient grounds for bringing the claim against the First Defendant.

[18] The pleaded case against the Second Defendant is:

- '5. The Second- Defendant is resident in the island of Nevis in the Federation of St. Christopher and Nevis. The Second- named Defendant is and was at all material times a director and the sole shareholder of the First- named Defendant.

⁸ Paragraph 2 of the Statement of Claim

6. Further, the Second –named Defendant is and was at all times an officer and/or the manager and/or the editor and/or the directing mind and controlling personality behind the operations and publication of the Newspaper.
7. Further or in the alternative, the Second-named Defendant participated in and/or authorized and/or secured the publication described in paragraphs 9 and 10 below. The article referenced in paragraph 9 below (of which the words in paragraph 10 are an excerpt) was prepared and the publication referenced in paragraph 9 below (of which the words in paragraph 10 are an excerpt) was effected with the participation, knowledge, consent or approval of the Second-named Defendant.
8. Further or in the alternative, the Second-named Defendant knew of the content of the article referenced in paragraphs 9 and 10 below and having full authority over person or persons to obtain the removal of the offending article and specifically the words set out in paragraph 10 below from the Newspaper before its publication, failed to so exercise his authority to ensure its removal from the said Newspaper, this resulting in its publication'

[19] In his defence, the Second Defendant denies that he gave consent and/or directed and/or permitted in his personal capacity to circulate and make available the newspaper belonging to the First Defendant online. He avers that it is the First Defendant who was responsible for publication.⁹

[20] The Second Defendant also admitted that he was a Director of the First Defendant but denies the matters set out in paragraphs 5 to 8 of the Statement of Claim set out above.

[21] The matters set out in paragraphs 5 to 8 above are therefore disputed facts which can only be resolved by a finding of fact at a trial. These facts cannot be resolved summarily by leading evidence of these facts separate from the trial. In any event, the Second Defendant has already sought to do that in his application to strike out and that application was determined by a previous Master.

[22] The pleaded case against the Second Defendant was considered by Actie M (as she then was) in an earlier application by the Second Defendant to strike out. At paragraph 15, the Court held:

⁹ Paragraph 2 of defence of the Second Defendant.

'I concur with Senior Counsel for the claimant that Mr. Cozier's application to strike out the alleged paragraphs and entire claim against him is misconceived. Any person who publishes or authorizes the publication of defamatory words can be held liable is proved. The fact that a corporation is liable for a tortuous act is not necessarily a bar to concurrent liability of the company's director or officers as in the case before this court.'

[23] Accordingly and for these reasons, the application fails.

COSTS:

[24] This is an interlocutory application within a claim. The application is not tied to the determination of the substantive issues to make costs in the cause. The regime of these costs are assessed costs. The method of assessment will be a summary assessment as opposed to a detailed assessment.

[25] The general rule for liability for costs is that costs follow the event. The application has been resolved in the Claimant's favour. There is no good reason to depart from the general rule.

[26] Accordingly, the Defendants must pay the Claimant's costs of this application to be summarily assessed by this Court in default of agreement within 28 days from today on the application of either party

ORDER:

[27] It is hereby ordered that:

1. The Defendants application filed on March 23, 2023 is dismissed; and

2. The Defendants shall pay the Claimant's costs of this application to be summarily assessed by this Court in default of agreement within 28 days from today on the application of either party.

Alvin Shiva Pariagsingh
Master

By the Court,

Registrar