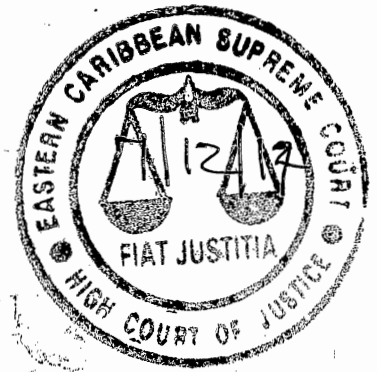


THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES



IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0240

BETWEEN

RISHATHA NICHOLLS

CLAIMANT

and

ARNHIM EUSTACE

DEFENDANT

CONSOLIDATED WITH
SVGHCV2014/0242

BETWEEN

RISHATHA NICHOLLS

CLAIMANT

and

ARNHIM EUSTACE

DEFENDANT

Appearances:

Mr. Ronald Marks and Mrs. Patricia Marks-Minors the claimant.

Mr. Bertram Commissiong Q.C., with him Ms. Maia Eustace instructing solicitor for the defendant.

2017: Dec. 7

Ruling on whether the defendant should be prevented from
asking the claimant about a newspaper article which was not disclosed

- [1] **Henry, J.:** The issue is whether the defendant should be prevented from cross-examining the claimant regarding a news article which was allegedly published by Eye Witness News (EWN) on its website in January 2014. The claimant objected to the defendant taking that course of action on the grounds that:
1. She had no notice;
 2. The court cannot verify the circumstances under which the information contained in it was gathered;
 3. If the document is adduced into evidence, the claimant would not be able to verify its authenticity;
 4. It would be prejudicial to the claimant and amount to a textbook case of trial by ambush; and
 5. The document was not tendered by its maker.

ISSUE

- [2] The issue which arises for consideration involves what I shall refer to as '**Cross-examination 101**'. It is usually said that 'cross-examination is at large'. It is trite law that cross-examination is the means whereby an opposing party gets the opportunity to make his/her case¹. He/she does this by asking questions aimed at challenging and destroying the other party's case, including the witness' evidence in chief.

Not tendered by maker

- [3] The defendant countered that it did not intend to produce the document into evidence. He submitted that he intends to test the claimant's credibility based on her responses to questions about the contents of the publication. The defendant contended that the judgment of the Trinidad and Tobago Court of Appeal in **Wiltshire and Wiltshire v Flaviney**² is instructive in this regard. In that case, the court considered the case of **Peter Blake**³ in which the Court of Appeal of Jamaica held that
- '...counsel is entitled in cross-examination to confront a witness with a document regardless of its admissibility and without disclosing its contents, to elicit a response ... which might be favourable to the facts which the cross-examiner is seeking to establish and damaging to the credit of the witness being cross-examined.'³

¹ EPI Environmental Technologies Inc. v Symphony Plastic Technologies plc [2004] EWHC 2945 (Ch.)

² Mag. App. No. 2 of 2006.

³ (1977) 16 J. L. R. 61.

- [4] The Trinidad and Tobago Court of Appeal accepted this statement of the principle to be correct and distinguished it from a situation where it is sought to admit a photograph into evidence. It reasoned that the circumstances of the latter case mandate compliance with the requirements of section 10 of the Administration of Justice (Miscellaneous Provisions) Act 1996, which provides that the photographer authenticates the photograph as being a true image.
- [5] This court notes the defendant's position that he has no intention of producing the document. There is therefore no need to address that part of the claimant's objection. Like the Trinidad and Tobago and the Jamaica Courts of Appeal, this court holds that '...counsel is entitled in cross-examination to confront a witness with a document regardless of its admissibility' for the singular purpose of testing his/her credibility. This case is no exception.

Notice

- [6] The cross-examiner has no duty to the other party to notify him/her of the line of questioning, or documents or other materials which will form the basis of cross-examination, unless those materials are disclosable pursuant to the CPR. This objection by the claimant is without merit.

Circumstances under which information gathered

- [7] With respect to the 'authenticity' challenge, this objection can be adequately addressed by an appropriate answer from the claimant who appears to be labouring under no particular impediment which would hamper her in understanding and responding to any question which might arise from the article. Furthermore, the court would be guided by the provisions of the Evidence Act⁴, (particularly section 51) in determining what weight to attach to her responses, to any suggestions put to her. The claimant's submission on this point does not justify limiting or preventing the defendant's cross-examination of the claimant on the contents of the document.

Prejudicial

- [8] It is notoriously known that only relevant and probative evidence is admissible in a civil trial in a court of law. It is just as accepted that the more probative the evidence, the more prejudicial. Accordingly, neither evidence nor documentary materials will be excluded from a case (as the basis of cross-examination) merely because it is prejudicial. If it is relevant, a party will be permitted to introduce it or ask questions about it. This contention does not assist the claimant.

⁴ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

ORDER

- [9] The claimant has not advanced any justifiable reason why the defendant may not cross-examine the claimant on the EWN article. I can find none. For all of the foregoing reasons, it is my considered opinion that the defendant may proceed to cross-examine the claimant on the article.

Esco L. Henry
HIGH COURT JUDGE



By the Court
REGISTRAR'S OFFICE
ST. VINCENT AND THE GRENADINES
Registrar