

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF SAINT CHRISTOPHER AND NEVIS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NUMBER: SKBHCV2016/0146

BETWEEN:

JOSEPHINE HUGGINS

Claimant

and

SKN CHOICE TIMES LIMITED

First Defendant

DWIGHT COZIER

Second Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Mr. Anthony Gonsalves Q. C with Mr. Arudranauth Gossai for the claimant
Mrs. Angela Cozier for the defendants

2017: August 16.

JUDGMENT

- [1] **ACTIE, M:** On 9th May 2016, the claimant filed a claim and statement of claim against the defendants seeking damages in libel consequent on a newspaper publication contained in the January 7th to 14th edition of the SKN Leeward Times Newspaper. Both the claimant and the second defendant have filed applications to strike out part of and/or the entire pleadings of the respective parties which I will determine in this one ruling.

The First Application

- [2] In the first application, the second defendant, Dwight Cozier, seeks an order of the court to strike out the claimant's statement of claim on the grounds that the claim discloses no cause of action against him and is an abuse of process. Cozier's challenges are founded and summarized as follows:-:

1. Paragraph 5 of the statement of claim asserts that "Cozier was at all material times a director and sole shareholder of the first defendant, SKN Choice Times Ltd." Cozier contends that the pleading is untrue as he is one of a number of other shareholders.
2. Paragraph 6 asserts that "Cozier was an officer and/or manager and/or editor and directing mind and controlling personality behind the operations and the publication of the newspaper". Cozier contends that the statement is untrue as the Broadcasting Manager of the newspaper is one Raynaldon Bartlette and the newspaper is run by four company employees.
3. Paragraph 7 asserts that "Cozier participated in and/or authorized and or/ secured the publication of the words and the publication of the alleged defamatory words and the publication of the article was effected with his participation, knowledge, consent or approval". Cozier contends that the statement is untrue as the newspaper is run by employees of the company.

4. Paragraph 8 asserts that “Cozier knew of the contents of the article and having authority over the person(s) to obtain the removal of the article before its publication in the newspaper failed to do so”. Cozier avers even if that were so, the words complained of are not capable of being defamatory and there would have been no reason to have them removed from publication in the newspaper.
- [3] Cozier asserts that it is the Newspaper company and not himself, who is the publisher of the Leeward Times newspaper. Cozier further contends that the evidence in the proceedings clearly shows that the Labour Party Communications Unit was the author of the alleged defamatory words. He further contends that neither himself nor the newspaper was responsible for the publication of the article.
- [4] Cozier, relying on the separate legal entity principle espoused in **Salomon v Salomon**, avers that paragraphs 5, 6, 7 and 8 of the statement of claim are all attempts by the claimant to pierce the corporate veil of the Newspaper Company unjustly and contrary to law. Cozier seeks to strike out the alleged offending paragraphs and the entire claim brought against him in his personal capacity.

Claimant's Response

- [5] The claimant in response states that Cozier's application is completely misconceived and should be dismissed with costs. Counsel avers that the applicable principle of law is that any person who publishes a defamatory imputation is liable for its publication. Liability is not limited to the originator of the statement.
- [6] Counsel avers that Cozier's participation and involvement in the publication has been clearly set out in the statement of claim. Counsel further contends that the factual and legal bases have been set out to establish Cozier's legal responsibility and liability for the offending publication.

Law and Analysis

The issue to be determined is whether a cause of action can be maintained against the 2nd defendant in his personal capacity?

- [7] The Separate Entity Principle established by the House of Lords in **Salomon v Salomon & Co Ltd** [1897] AC 22 is a fundamental principle of Company Law. The general principle is that a corporation is a distinct person with its own personality separate from and independent of the persons who formed it, who invest money in it, and who direct and manage its operations. The directors and shareholders of a company are not personally liable for the defaults of the company save in special narrowly defined circumstances, where the Separate Entity principle had the potential to be abused or the application of the principle may lead to unjust consequences. This is known as 'lifting the veil of incorporation'.
- [8] Counsel for the claimant avers that Cozier is under the misapprehension that because the newspaper company is a corporate entity, any director or officer of the company who "participated" in the publication is insulated or shielded from personal liability or responsibility because of the separate personality principle. Counsel contends that the piercing of the corporate veil occurs when the law goes behind the company personality to expose the true actor and defendant in certain cases. Counsel contends that this is not the situation in the case at bar as the claimant is suing both defendants.
- [9] A person who authorizes an agent or employee to make defamatory imputations of the claimant or who grants to another a right to print, publish, reproduce or sell a publication containing a defamatory imputation is liable for such publication¹. A person may also be liable for the publication of a defamatory imputation if, although he does not directly authorize it, he nevertheless fails to tell a person over whom he has control to remove the offending publication. In **Lobay v**

¹ Regan v Taylor [2000] NLJR 392

Workers & Farmers Publishing Association², the court held that officers of a printing company were liable for a publication where they were aware that employees were using presses to circulate defamatory remarks but nevertheless took no steps to stop them. Similarly, liability for publication has been held to exist where the managing director of an internet service provider on being told of a defamatory posting on an internet newsgroup, failed to order its removal.

- [10] The nature of control of corporate entities was defined by Lord Denning in **Bolton (Engineering) Co. Ltd v. Graham & Sons**³ where he stated:

“A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also had hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does...”

- [11] Liability in libel cases extend to persons who had control of the publication. The claimant alleges that Cozier participated or authorized the publication of the defamatory article. Counsel for claimant refers the court to the text **Carter Ruck on Libel and Privacy**⁴, citing **Gatley on Libel and Slander** which states

“At common law, liability extends to any person who “participates in, authorizes or secures a publication”.

- [12] Counsel for the claimant contends and I accept that piercing the corporate veil occurs when the law goes behind the company personality to expose the true actor and defendant in certain cases. The claimant is not seeking to pierce the corporate veil but is bringing a claim against the company as publisher and Cozier as the officer/director/editor who participated or authorized the publication of the defamatory words published by the newspaper company.

² [1939] 1 WWR 220

³ (1957) 1 Q. B 159,

⁴ 6th Edn.

[13] Rule 26.3 provides of CPR 2000 provides for the striking out statement of case and reads as follows:

- (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.

[14] The discretionary power of striking out is limited to plain and obvious cases. Cozier's main contention is that the first defendant, SKN Choice Times Limited, being a limited liability company is clothed with principle of separate legal entity and the directors or shareholders cannot be made responsible for acts committed by the committed by the company.

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

[16] The authorities establish that any person, for example a writer, producer, director, editor, who caused or was responsible for the publication or broadcast of a defamatory statement, could be sued by the claimant.

[16] The specificity of the pleading is necessary in determining whether a claim can be made out against Dwight Cozier as director/officer with responsibility of the publication and the publishing company. These are all legal matters to be proved at trial. Counsel for the claimant contends and I concur, that pleadings do not establish the facts as truth but merely establish a cause of action. The claimant's claim will have to be proved at trial after disclosure, request for information and filing of all witness statements in compliance with CPR 2000.

[17] The court must have a high degree of confidence that the claim would not succeed before striking out as an abuse of process. I am of the view that the application to strike out the purported offending paragraphs 5-9 of the statement of claim or in the alternative to strike out the entire claim against Dwight Cozier is premature.

ORDER

[18] Applying the aforementioned principles to the facts before this court, it is ordered that the application by Dwight Cozier, the second defendant, to strike out parts or the entire statement of claim stands dismissed with costs to the claimant in the sum of \$1500.00.

The Second Application

[19] The claimant, Josephine Huggins, seeks an order of the court as follows:

- (1) Pursuant to Part 26.3 (1) (a) and /or (d), paragraphs 2 through 11 of the Defence of the 1st named Defendant be struck out for the failure to comply with Part 10.5(4)(a) and/or 10.5.(5)
- (2) Alternatively Pursuant to CPR 26.3(1) (c) that paragraphs 2 and 5 through 8 inclusive of the defence be struck out as constituting an abuse of process of the court;
- (3) Alternatively pursuant to CPR 26.3(1) (c) that paragraph 10 of the defence be struck out for failure to comply with Part 10.5(3);
- (4) Alternatively, pursuant to Part 26.3(1) (a) and /or (d) that paragraphs 10 and 40 of the defence be struck out for failure to comply with Part 10.5(3)

- (5) Alternatively pursuant to Part 26.3 (1) (b), paragraphs 5 through 8 inclusive of the defence be struck out for disclosing no reasonable grounds for defending the claim.

- [20] The claimant in paragraph 2 of the Statement of Claim pleads, inter alia, that “the first defendant, was at all material times the publisher and/or printer and/or operator and/or proprietor of the second defendant, SKN Leeward Times Newspaper (the “Newspaper”)”. The first defendant in its defence “admits that it is a Nevis Company, with its registered office situate at Ramsbury, Charlestown Nevis” but otherwise denies paragraph 2 of the claim without giving any reasons for the denial.
- [21] The claimant avers that the first defendant has given a bare denial to the assertion that it was the publisher. However, the first defendant in direct contradiction, at paragraph 37 of the defence where it is stated “it is common knowledge that that the 1st defendant prints and publishes the Leeward Times newspaper”
- [22] Paragraph 3 of the Statement of Claim asserts that “the circulation and availability online was by or with the consent and/or permission of the Defendants, and through the address www.skncit.com”. The first defendant in the defence states “paragraph 3 of the statement of claim is denied except to say that the SKN Leeward Times Newspaper is circulated on line”. The defendant in response states “ paragraph 3 of the statement of claim is denied except to say that SKN Leeward Times Newspaper is circulated on line”. The claimant contends that the first named defendant gave a bare denial and failed to state it’s reasons for the denial as required by Part 10.5(4)
- [23]. Paragraph 4 of the Statement of Claim made allegations of “ the omission of the Christian name, Surname and place of abode of the editor of the Newspaper”. The 1st defendant in response states ” paragraph 4 discloses no reasonable cause of action for bringing the claim in libel against the 1st defendant and ought to be struck out as an abuse of process of the court”. The claimant contends that the defence is not a factual reason for the denial and does not in any way address the multiple assertions made by the claimant.

- [24] The claimant at paragraph 5 of the Statement of Claim pleads “ Dwight Cozier is resident in Nevis, in Saint Christopher and Nevis, is and was at all material times a director and the sole shareholder of the first defendant”. The 1st defendants defence in reply states” paragraph 5 of the statement of claim is denied as it discloses no or no reasonable cause for bringing the claim in libel against the 1st defendant. Further, the claimant has no grounds upon which to lift the corporate veil of the 1st defendant. Accordingly, this paragraph ought to be struck out as an abuse of process. The claimant contends that the response does not address the factual allegations.
- [25] The claimant at Paragraph 6 of the statement of claim states “ Dwight Cozier 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 and publication of the Newspaper”. The first defendant states “ Paragraph 6 of the statement of claim is denied and the claimant is put to strict proof of the allegations made therein without lifting the corporate veil of the first defendant”. The claimant contends that the paragraph 6 of the defence contains bare denials without giving any reasons in contravention of CPR 10.5(4) (a).
- [26]. The claimant at Paragraph 7 of the claim states “ Dwight Cozier participated in and/or authorized and/or secured the publication in question and that the article in question was prepared and the publication was effected with the participation, knowledge, consent or approval of Dwight Cozier”. The first defendant in its defence states “Paragraph 7 of the statement of claim is denied and the claimant is put to strict proof of the allegations made therein without lifting the corporate veil of the 1st defendant”. The claimant avers that paragraph 7 is a bare denial in contravention of 10.5(4)
- [27] The claimant at Paragraph 8 of the claim asserts that “Dwight Cozier knew of the content of the article in question and having authority over person or persons to obtain the removal of the offending article and specifically the referenced words from the Newspaper before its publication, failed to so exercise his authority to ensure its removal from the Newspaper, thus resulting in its publication”. The 1st defendant in response states “ Paragraph 8 of the statement of claim is denied and the claimant is put to strict proof of the allegations made therein without lifting the corporate veil of the 1st defendant”. The claimant avers that paragraph 8 is a bare denial in contravention of 10.5(4) (a).

- [28] The claimant at Paragraph 9 of the Claim asserts “ on page 12 of the January 7th – January 14th 2016 issue of the Newspaper (Edition 911), the Defendants falsely and maliciously wrote, printed and published, or caused or permitted, or authorized to be written, printed and published, of and concerning the claimant and/of and concerning the Claimant in her position as Cabinet Secretary in the Government of St. Kitts and Nevis, certain words contained in an article entitled (in bold print) **“Media houses requested to investigate payments, relationship”**. In its defence, the 1st defendant states “Paragraph 9 of the statement of claim is denied and the claimant is put to strict proof of malice, strict proof of falsity, strict proof of authorship, and strict proof of the publication of any statement libelous to the claimant”. The claimant contends that the defendant made a bare denial and did not provide any reasons, in contravention of part 10.5(4) (a).
- [29] The claimant avers that paragraph 10 of the defence in its purported answer to paragraph 10 of the statement of claim has not clearly set out what allegations are admitted, denied, neither admitted nor denied or wishes the claimant to prove. The claimant avers that paragraph 10 while purporting to be a carte blanche denial (without reason) then goes on to recount the one instance when the claimant is mentioned in the article which is the very reference to the claimant.
- [30] The claimant at paragraph 15(k) of the Statement of Claim asserts “by letter dated April 18, 2016 from the Claimant’s Attorneys-at-Law to the First named Defendant’s Attorney-at-Law, the Claimant’s Attorney-at-Law pointed out that the said Newspaper edition did not contain the surname and place of residence of the editor thereof, contrary to section 12 of the Newspaper Act Cap. 18:23; The letter also pointed out that section 13 of the Newspaper Act Cap. 18:23 provides for an application to be made to the court for discovery of the name of the printer, publisher or proprietor or of any matters relative to the printing or publishing of any newspaper in order to more effectively bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libelous matter contained in such newspaper; The letter requested that the First-named Defendant disclose by reply within 2 business days the name of the editor of the said newspaper edition No. 911 ; and to date in question no reply was received to the said letter without receiving a response”.
- [31] The defendant in response at paragraph 40 of the defence states” paragraph 15(k) of the statement of claim is denied and the defendant repeats paragraphs 32 & 33. Paragraph 32 of the

defence states “in particular, the 1st defendant denies paragraph 15(a) of the statement of claim because the words complained of by the claimant in paragraph 10 of the statement of claim also concerned a request by the Prime Minister for the payment of \$25,000.00 to two high ranking police officers, which fits into the caption of the article” Media Houses requested to investigate payments, relationship’ and were not simply tacked on at the end of the article”. Paragraph 33, “denies paragraph 15 (b) of the statement of claim and repeats paragraph 10 of the defence above”. The claimant avers that Paragraph 40 of the Defence contains neither an admission nor a denial but attempts to evade the allegations by a misdirected answer and the mere repetition of paragraphs 32 and 33 of the defence is in contravention of Part 10.5 (3).

Law and Analysis

[32] **CPR 2000 Rule 10.5** requires a defendant to set out its case and provides as follows:-

- (1) The defence must set out all the facts on which the defendant relies to dispute the claim
- (2) Such statement must be as short as practicable.
- (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.

[33] Rule 10.5 places a duty on a defendant to deal with each fact pleaded against it in a claim and statement of claim by either admitting or denying the facts. Where the defendant denies any of the allegations in the claimant's statement of case he or she must also state the reasons for doing so and if he/she intends to prove a different version of events that different version must be set out in the defence.

[34] In the instant case, I am in agreement the claimant that paragraphs 2 to 9, of the first defendant's defence are in contravention of Rule 10.5. Paragraphs 2, 3 and 4 constitute bare denials without giving any version of facts in direct breach of Rule 10.5(4). Paragraphs 5 to 9, the first defendant made bare denials and asserts that the claimant is seeking to lift the corporate veil of the first named defendant. The first defendant has not responded to the claimant pleaded facts but raised and challenged issues of law. In my opinion, the first defendant is raising a point that is not in issue at this point of the proceedings. It has not given a different version of events. The claimant states that Cozier was the director, officer or had control of the publication or had the power to restrict the publication. The first defendant has not given a proper response to the claimant's assertions in relation to Dwight Cozier's participation in the publication. A defendant is under a duty to plead its version of facts in the defence to put the claimant on notice of the type of defence that he/she would be faced with at trial.

[35] The first defendant at paragraphs 6 to 9, gave bare denials and put the claimant to strict proof of the assertions. Rule 10.5 (3) only allows a defendant to give a bare denial where the defendant has clearly stated that he/she cannot admit or deny because he/she does not know. The defendant must expressly state that he/she doesn't know. It is only if the defendant clearly states that he/she doesn't know then the defendant is allowed to put the claimant to the proof of the facts relied on in the statement of claim. The first defendant has not categorically stated that it doesn't know of any assertions or they are true or false. In **Kenneth Harris v Sarah Gerald**⁵ Gordon, JA] states that .

⁵ MNIHCVAP 2003/0003

“bare denials” to the allegations contained in the of statement of claim are not permissible under CPR. 2000. The defendant must give a reason for the denial and 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.

[36] Pleadings are intended to help the Court and the parties. The matters pleaded by the claimant are primary facts to indicate the writer or the person with the authority to publish or to withdraw the publication. As indicated above, the Newspaper company although clothed with separate legal entity distinct and apart from its directors could not have published the document unless the publication was orchestrated by an individual. The claimant is saying no more than that Cozier wrote or caused to be written or had knowledge or had the authority to withdraw the publication of the alleged defamatory document. The rules require the defendants to plead in answer whether the claimant’s allegations are true or false and if not true, to provide their version of facts.

[37] The court of Appeal in **Sandra Ann- Marie v Nigel Don-Juan Glasgow**⁶ Blenman JA states
“ Under the **Civil Procedure Rules 2000**(“CPR 2000”) it is impermissible for a defendant to simply state in a defence that he or she is unable to admit or deny an averment without giving reasons for doing so. A defendant who adopts this posture is in violation of CPR 10.5(3) and 10.5(5).”

[38] CPR 26.3 (1) confers the discretion on the court to strike out a statement of case or part of a statement of claim if it appears to the court that :- (a) there has been a failure to comply with a Rule or (b) the statement of case or part to be struck out does not disclose any reasonable ground for bringing or defending the claim or (c) the statement of case or the part to be struck out is an abuse of the court or is likely to obstruct the just disposal of the proceedings (d) the statement of case or part to be struck out is prolix or does not comply with the requirements of part 8 or 10.

[39] Having reviewed the pleadings, I am of the opinion that Paragraphs 2 to 9 of the first defendant’s defence are bare denials without providing any reason for the denials, in direct contravention of CPR 10.5 (4) and (5) of the CPR 2000. Accordingly, the paragraphs 2 to 9 of the first defendant’s defence are struck out.

⁶ SVGHCVP 2013/0003

- [40] The claimant seeks to strike out paragraph 10 of the first Defendant's defence on the ground that the first defendant has not clearly stated allegations admitted or denied or which allegations that the claimant is to prove. The claimant states the paragraph 10 is a carte blanche denial without reasons.
- [41] The court notes that the first defendant clearly denies paragraph 10 of the statement of claim. The first defendant then proceeded to give its version of facts. The claimant avers that the defendant goes on to recount the one instance when the claimant is mentioned in the article which is the very reference to the claimant. I am of the view that the first defendant has complied with the requirements of CPR 10.5 by giving a denial and supplying its own version of facts. It is for the court, if the matter proceeds to pretrial or trial, to make a determination of the probative value of the defence pleaded in response to the claimant's assertion. Accordingly, I will refuse the application to strike out paragraph 10 of the defence.
- [42] The claimant asserts that paragraph 40 of the defence is a purported answer to paragraph 15K of the statement of claim. The claimant avers that paragraph 40 is neither an admission or a denial but attempts to evade the allegations by a misdirected answer in contravention of 10.5(3). The court notes that Paragraph 40 of the defence denies paragraph 15(k) of the statement of claim and the defendant went further and repeats paragraph 32 and 33 of the defence. Paragraph 32 denies paragraph 15(a) of the claim and gives a version of facts which the first defendant seeks to rely on. At Paragraph 33, the first defendant denies paragraph 15(b) – (f) of the statement of claim and repeats and relies on the facts pleaded at paragraph 10 of the defence.
- [43] The claimant contends that the mere repetition of paragraphs 32 and 33 of the defence does not amount to compliance with the applicable rules. I am of the contrary view. CPR 10.5 requires the defendant to provide its version of facts where the claimant's assertions are denied. The first defendant denies the claimant's assertion and has referred the court to its version of facts as pleaded in paragraphs 33 and 10 of the defence. I am of the view that there has been sufficient compliance with the requirements. The defendant is not under an obligation to reproduce the full text of the pleadings having indicated that it seeks to rely on the version of facts pleaded therein. As indicated above, the court will have to make a determination of the weight and relevance of the

pleadings if the matter proceeds to trial. Accordingly, I am of the view that the defendant has complied with the requirements CPR 10.5 in relation to paragraph 40 and accordingly the application to strike out paragraph 40 of the defence is refused.

ORDER

[44] In summary and for the foregoing reasons, it is hereby ordered as follows:-

1. Pursuant to CPR 26.1, Paragraphs 2 to 9 of the defence filed by the first named defendant are struck out.
2. The claimant's application to strike out paragraphs 10 and 40 of the first defendant's defence is refused.
3. Both parties having had some level of success, accordingly costs in the cause in the second application filed by the claimant are reserved at trial.

**AGNES ACTIE
HIGH COURT, MASTER**

BY THE COURT

REGISTRAR