

COMMONWEALTH OF DOMINICA

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

Claim No DOMHCV2008/0321

BETWEEN:

EDISON C JAMES

Claimant

AND

CLAUDIUS "COCOM" LETANG

Defendant

.....
2009: November 26

2010: June 3
.....

Appearances

Mr McDonald Christopher for the Claimant
Mrs Heather Felix Evans for the Defendant

Decision

Introductory

- [1] **LANNS, MASTER:** On 19th August 2008, Edison James (Mr James) issued a Claim against Claudius "Cocom" Letang (Mr Letang) claiming damages for libel allegedly spoken and published during a broadcast programme hosted by Leonard "Pappy" Baptiste on Kairi FM on 22nd July 2008. Mr James alleged that in speaking and publishing the alleged defamatory words, Mr Letang was motivated by malice.
- [2] The publisher of the words complained of spoke about Mr Roosevelt Skerritt, the current Prime Minister of Dominica, and Mr Edison James the former Prime Minister of Dominica.
- [3] The publisher commented on "the land that money God gave to Skerritt". The publisher stated that if other persons had gotten the land that God gave to Prime Minister Skerritt, they would have taken it. The publisher then went on to state as a fact that Mr James built a 4 million dollar hotel in Barbados. He then requested Mr Baptiste, the host of the

programme to enquire of Mr James as to where he, Mr James took the money with which he built a 4 million dollar hotel in Barbados.

[4] Mr James alleges that the natural and ordinary meaning of the words is that he is dishonest, committed a criminal offence by stealing; that he breached section 47(1) of the Integrity in Public Office Act No 6 of 2003; that he lacked integrity when he served as Prime Minister; and that he is unpatriotic.

[5] The Defendant denies having spoken or published the words complained of. He denies that the words bear the meanings alleged or any defamatory meaning. He asserts that the Defendant could not have published maliciously what he did not publish at all.

[6] In the three-fold application now before the court, Mr Letang seeks the following reliefs:

- (1) An order determining whether or not the words complained of are capable of bearing a defamatory meaning or meanings attributed to them in paragraphs 7 and 8 of the statement of claim.
- (2) An order striking out paragraphs 9 and 12 of the Statement of claim as disclosing no reasonable case against Mr Letang or as being an abuse of process.
- (3) An order dismissing the claim.
- (4) Costs of the application.

Grounds of application

[7] The grounds of the application may be summarized as follows:

- a) There is nothing in the words complained of which suggests that the Claimant was being accused of dishonesty, theft or breach of a provision of the **Integrity in Public Office Act**.

- b) A statement was made about the source of Prime Minister Skerritt's land. There was no imputation in this statement that Prime Minister Skerritt was dishonest, or had breached the **Integrity in Public Office Act**. This statement was soon followed by a declaration that the Claimant had built a hotel in Barbados and a query as to the source of Mr James's money for building a hotel in Barbados. These words could not have the meaning attributed to them by the Claimant, or any defamatory meaning.
- c) At the relevant time, the **Integrity in Public Office Act** had not come into operation and therefore it was impossible for that Act to have been breached at the material time.
- d) In relation to paragraph 8 of the Statement of Claim, the Claimant has not identified the relevant extrinsic facts on which he relies to contend for the innuendo meaning; the words complained of do not bear any of the meanings contended or any defamatory meaning.
- e) The Claimant has failed to properly plead malice by setting out the particulars of primary facts on which he relies to allege malice.

Point in limine

- [8] When the Defendant's learned solicitor Mrs Felix-Evans (Mrs Felix-Evans) was about to make her application, Mr Christopher raised a preliminary objection to Mr Letang's supporting affidavit – an objection which was first raised in paragraphs 12 and 28 of Mr James' affidavit in opposition to Mr Letang's application. Counsel submitted that Mr Letang's affidavit in support of the application should be struck out because it contains no evidence, only a legal conclusion. Mr Christopher referred the court to rules 11.9 and 30.3(1) and went on to submit that Mr Letang has breached those rules in not providing evidence in support of the application and in not containing such facts as Mr Letang is able to prove from his own knowledge. Further, Mr Christopher submitted that there is no evidence to support a ruling on meaning. If there is no affidavit evidence, the application is a nullity, Mr Christopher contended.

- [9] In response, Mrs Felix-Evans submitted that no affidavit is necessary because the questions before the court are questions of law and as such no facts are necessary. Learned counsel posited that the affidavit can only speak to facts - not evidence, and Mr Letang can only be advised by his lawyer. He is saying that based on the advice given to him by his lawyer there are good grounds for the application. Counsel was of the view that in a case of this nature where a question of law is before the court, the general rule as contained in rule 33.3(1) which says that a deponent must only speak of facts which he is able to prove from his own knowledge is inapplicable. In her view, if the court were to reject the Defendant's application it would be saying that rule 69.4 has no meaning.

Mr Letang's Supporting Affidavit

- [10] Mr Letang's affidavit in support of the application was a short affidavit containing 4 paragraphs. Paragraph 1 deposes to his identity. In paragraphs 2 and 3, Mr Letang state:

"2. "Where the matters to which I depose are within my knowledge they are true. Where the matters are not within my own knowledge, the information contained in this affidavit is true to the best of my knowledge, information and belief, and is based upon the facts herein."

"3 I have read the Notice of Application and the grounds thereof and, based on the advice of my solicitor regarding the relevant law verily believe these are good grounds for my application.

- [11] In paragraph 4 Mr Letang urges the court to grant the orders that he sought.

- [12] It is evident that Mr Letang's affidavit did not contain any facts; instead, it deposed to the grounds of application put forward in his application.

Ruling on preliminary point

[13] After due consideration of the submissions, and on the basis of rule 11.8 (3) (c), and rule 69.4 which does not require evidence, I agreed with the submissions of Mrs Felix-Evans, and overruled the point in limine and allowed Mrs Felix Evans continue the Claimant's application. In doing so, she highlighted the grounds of the application and expanded on the written submissions that had been filed.

[14] Mr Christopher then expanded on written submissions filed on behalf of Mr James. He also referred to the contents of Mr James' affidavit in opposition to Mr Letang's application. It is instructive to outline relevant contents of the affidavit in opposition.

Mr James' affidavit in opposition

[15] Mr James, in his affidavit in opposition to the application states, among other things that the plain and natural and ordinary meaning of the words is that he dishonestly took \$4 million which was disproportionate to his income and that the said statement allegedly made by Mr Letang is seen in the context of corruption which the Defendant was alleging.

[16] Mr James pointed out that it matters not that the **Integrity in Public Office Act** No 6 of 2003 was not yet in force when he was Prime Minister or when the false and defamatory statement was made by the Defendant. He was adamant that the words conveyed an imputation that he was dishonest, unpatriotic, lacked integrity when he served as Prime Minister.

[17] In relation to the issue of Malice, Mr James deposed that he clearly outlined the particulars of malice in his Statement of Claim and in his Reply. He further deposed that the words called attention to him, defamed him and held him up in contempt, scorn and ridicule. Consequently, according to Mr James, the words tend to lower him in the estimation of the community, and deter persons from associating or dealing with him, or induce them to shun him for dishonesty. He further stated that the words have brought him into hatred and contempt and have diminished his standing among reasonable people. Mr James concluded his affidavit by urging the court to dismiss with costs the Defendant's application

and rule that the words complained of were capable of bearing a defamatory meaning. I now consider the first limb of the application.

1. Whether or not the words complained of are capable of bearing a defamatory meaning or a meaning attributed to them in the statement of claim

[18] Paragraph 3 of the statement of claim states:

“ On Tuesday 22nd July 2008 during a radio programme on Kairi FM Radio the Defendant called in and falsely and maliciously said by the following transcript:

“Those fellars Pappy you haven't got to let them fool you. And if you become the Prime Minister tomorrow they themselves will have the same hatred they have in they heart for Skerritt. If they had gotten the land that Money God give to Skerritt, all of them would have taken it. Edison James go and build big hotel in Barbados. Ask Edison James where he took the money for him to build that 4 million dollar hotel in Barbados. You should ask Edison James what happened. ... ”

[19] Paragraph 7 states:

“The said words in their natural and ordinary meaning meant and were understood to mean:

PARTICULARS

- a) The Claimant was dishonest and built a \$4 million hotel in Barbados.
- b) That by Section 47 (1) of the INTEGRITY IN PUBLIC OFFICE ACT 6 of 2003 the Claimant as a person in public life is liable to a fine of \$5000.00

and imprisonment for a term of two years and forfeiture of assets if he built a \$4 million hotel which is disproportionate to his legitimate source of income. The Defendant was questioning the source of the Claimant obtaining \$4 million to build.

- c) The Claimant committed a criminal offence by stealing \$4 million to build a hotel.

[20] Paragraph 8 states:

"By way of innuendo the Defendant meant and was understood to mean:

PARTICULARS

- "(i) The Claimant lacked integrity when he served as Prime Minister.
- (ii) The Claimant displayed unpatriotic conduct in building a \$4 million hotel in Barbados when there was no such hotel."

The applicable principles

[21] The principles by which a court should be guided in determining meaning of words have been laid down in a number of cases including **Luis v Daily Telegraph [1964] A.C. 234** and **Skuss v Granada Television Limited (1996) EMLR 278** at page 285. These principles have been quoted and applied favourably in judgments of the Eastern Caribbean Supreme Court.

[22] In **Dr Ralph Gonsalves v Kelvin Gibson, Edwardo Lynch and BDS Limited Claim No SVG2002/405 & 406 Alleyne J** quotes Lord Reid in **Luis v Daily Telegraph (supra)** as saying:

"what is the sense in which any ordinary reasonable man would understand the words of the communication so as to expose the plaintiff to hatred, or contempt or ridicule ... it is not enough to say that by some person or another the words might be understood in a defamatory sense."

His Lordship continued:

"These statements of the law appear to have been generally accepted and I would not attempt to restate the general principle.

"In this case, it is, I think sufficient to put the test first 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 to the words in question.

"What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression."

[23] In **Dr Ralph Gonsalves v Kelvin Gibson et al Claim No SVG2002/405 & 406** Alleyne J quotes Lord Bingham M.R in **Skuss v Granada Television Limited** (1996) EMLR 278 at 285 as saying:

- "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 avid 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 person generally.
6. In determining the meaning of the material complained of the court is not limited by the meaning which either the plaintiff or the defendant seeks to put on 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."

[24] Applying those principles to the present case, I have analyzed the words, and I have concluded that, prima facie the words complained of, in their ordinary and natural meaning are capable of bearing the meaning ascribed to them in paragraph 7 (a) and (c) and paragraph 8 of the Statement of Claim.

[25] Consequently, paragraph 7 (b) of the Statement of Claim is struck.

[26] Ultimately, the question of what the words actually mean is a matter for the jury. It may be that the words are capable of other meanings than those pleaded by the Claimant. The jury has to decide if the words are in fact defamatory. This point was succinctly made by Lord Morris of Borthy-Best in **Jones v Skelton**, [1963] 3 All ER 952 at p 958 letter e;

"It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for a decision by the court. If the words are so capable then it is a question for the jury to decide whether the words do in fact convey a defamatory meaning ... "

The striking out applications:

The principles governing striking out statement of case

- [27] Part 26.3(1) (b) of the Civil Procedure Rules 2000 empowers the court to strike out any statement of case on the ground that it fails to comply with a rule, practice direction, order or direction given by the court in the proceedings; or if the statement of case, or the part to be struck out does not disclose any reasonable ground for bringing or defending the claim; or if the statement of case is an abuse of the court's process or is likely to obstruct the just disposal of the proceedings; or if the statement of case, or part to be struck out is prolix, or does not comply with the requirements of Part 8 or 10.
- [28] The jurisdiction to strike out a statement of claim or portions of a claim for libel at this stage is drastic one. It is to be exercised sparingly, and only in plain and obvious cases. It obviates the necessity for trial or will substantially reduce the burden of preparing for trial or the burden of the trial itself. This point was made clear in **Williams and Humbert v W.H. Trademarks** (1986) AC, 368 at 435-436).
- [29] Sir Dennis Byron in **Baldwin Spencer v The Attorney General of Antigua et al**, [1999] 3 LRC, page 8 letter (b) - Antigua and Barbuda Civil Appeal No 20 A) also captured the same point, and admonished us as follows:

"This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court."

[30] It has been said that the fact that a judge or a master has the power to strike does not mean that the initial approach will be to strike out the statement of case. In many cases there will be alternatives which enable the court to deal with cases justly without taking the draconian step of striking the case out.

[31] It is also well settled that on hearing an application to strike out under 26.1 (b) the trial judge must assume that the facts in the statement of claim are true. (See **Cito Global Custody NV v Y2K Finance Inc**, British Virgin Islands Civil Appeal HCAP 2008/022, paragraph 13, page 8). However, we are cautioned to take care to distinguish between primary facts and conclusions and inferences from those facts.

Should portions of the Claimant's pleadings be struck?

[32] The relevant paragraphs are paragraphs 9, and 12 of the Statement of Claim and the entire Reply.

Paragraph 9 reads:

"9 The Defendant was malicious:

PARTICULARS

- (a) Sought to destroy the Claimant politically by showing him as being unfit for office.
- (b) Said words were designed to damage and destroy the Claimant at the fourth-coming general election.
- (c) Sought to impute that the Claimant was not honest in execution of functions as the Prime Minister of Dominica.
- (d) The Defendant knew or ought to have known that the Claimant did not "go and build" a "\$4 million dollar hotel in Barbados" and that the statement was untrue.
- (e) The Defendant published the words in the knowledge that they were defamatory and with reckless disregard as to whether they were true or false."

10...

11... "

[33] Mrs Felix Evans submitted that the particulars set out in paragraph 9 are not particulars of facts, nor are they primary facts. She was of the view that they were generalized statements, inferences and conclusions. As previously mentioned, Mr James' response to this submission was that he clearly outlined the particulars of malice in his Statement of Claim and in his Reply.

[34] Rule 69.2 (c) sets out the pleading requirements where malice is alleged; as follows:

"(c) If the claimant alleges that the defendant maliciously published the words or matters – give particulars in support of the allegation.

[35] As to what constitutes malice, Cory J speaking on behalf of the Supreme Court of Canada in **Hill v Church of Scientology of Toronto**, CanLII 59 (SCC); [1995], DLR (4th) 129 at 17, observed as follows:

"Malice is commonly understood, in a particular sense, as spite or ill will. However, it also includes ... "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. Malice may be also established by showing that the defendant spoke dishonestly, or in reckless disregard for the truth.

[36] In **Horrocks v Lowe**, [1975] A.C. 135 (House of Lords) Lord Diplock stated:

"The motive with which a person published defamation matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive of evidence of express malice,

for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing defamatory reports made by some other person."

- [37] The concept of malice was also discussed in **Dorset Flint & Stone Blocks Ltd v Moir**, [2004] EWHC 2173. In that case, Eddy J warned that

"[A]llegations of malice like allegations of fraud, need to be scrutinized with particular care to ensure that there is a sufficient evidential basis for alleging dishonesty or inviting such an inference. Such allegations should not be made formulaically by mere assertion or used as a tactical weapon to try to bludgeon people into submission or compromise. It is no good merely to say, "I have put in a plea leave it up to the jury to decide." There must be facts alleged which, if true, are more consistent with the presence of malice than with absence."

- [38] It would appear, based on the foregoing principles and concepts that in the present case the issue of malice does revolve around the allegations in paragraph 9 (a) (b) (d) and (e), although sub paragraphs (a) and (b) may not be properly or elegantly framed. These allegations are not supported by the relevant material facts capable of proving malice, nor the requisite particulars as contemplated by Part 69.2 (c). In relation to paragraph 9(c), I find Mrs Felix Evans' submission that that paragraph amounts to a conclusion, is well founded.

- [39] However, I do not think that paragraph 9 is so incurably bad that it should be summarily struck out and the action dismissed in its infancy. No case management conference has been held as yet. In this case, I think the proper approach will be to allow (if permission is required) Mr James to amend his claim to give particulars of the words complained of and extrinsic facts or circumstances, including special knowledge, being relied on by the Claimant as creating the "malice" pleaded in paragraph 9 of the Statement of Claim.

[40] **Paragraph 12.** reads:

“12. The facts and matters relied upon to show that the said words referred to the Claimant and were understood to refer to the Claimant are:

- (a) The Defendant was contrasting the current Prime Minister Skerritt with the former Prime Minister Edison James.
- (b) The Defendant has been promoting a vendetta against the Claimant since his term of office ended at the general election 31st January 2000.”

[41] Mrs Felix-Evans submitted that paragraph 12 is irrelevant and serves no useful purpose and is therefore an abuse of process of the Court. Mr James did not rebut or challenge this submission.

[42] To my mind, the issue as to whether the words refer to the Claimant is an issue for the determination of the court when deciding whether the words do in fact impute a defamatory meaning to the Claimant. I find that that paragraph 9 is immaterial and serves no useful purpose. It does not establish any reasonable cause of action against the Defendant. It is therefore struck out.

The Reply

[43] Although the Defendant’s application is captioned “NOTICE OF APPLICATION FOR RULING ON MEANING AND TO STRIKE OUT CERTAIN PARAGRAPHS OF THE STATEMENT OF CLAIM AND REPLY” the application itself does not specifically ask for an order striking out the Reply. Moreover, the grounds of application advanced by the Defendant do not include any grounds relating to the striking out of the Reply. This is in breach of rule 11.7 (1). The Defendant is also in breach of Rule 11.13 which states that an applicant may not ask at a hearing for an order which was not sought in the application unless the court gives permission. No permission was ever sought at the hearing by the

Defendant, and the court seemed to have overlooked the fact that the rules have been breached.

[44] However, in light of the fact that the Respondent raised no issue with respect to the purported application to strike out the Reply; and further, in light of the fact that both parties were permitted to make submissions in relation to striking out of the Reply, I consider that the application was intended to include an application to strike out the Reply and treat it as such.

[45] The CPR 2000 does not deal with the pleading requirements of a Reply. It sets out the time for filing and service of the Reply, and it mandates that the Reply be verified by a certificate of truth. That being the case one must rely on the law and practice in England by virtue of s11 of the Eastern Supreme Court (Dominica) Act, Ch 4:02, referred to as "the reception provision".

[46] In **Blackstone's Civil Practice, 2006**, at paragraph 27.2 the authors describe the contents of a reply in this way:

"CONTENTS OF A REPLY

Conventionally a reply may respond to any matter raised in the defence which were not, and which should not have been, dealt with in the particulars of claim, and exists solely for the purpose of dealing disjunctively with matters which could not properly have been dealt with in the particulars of claim, but which requires a response once they have been raised in the defence. It has always been a cardinal principle of pleading (which has certainly not been altered by CPR) that a claim should not anticipate a potential defence (popularly known as 'jumping the stile'. Once, however a defence has been raised which requires a response so that the issues between the parties can be defined, a reply becomes necessary for the purpose of setting out the claimant's case on that point. The reply is, however, neither an opportunity to restate the claim, nor should it be drafted as a defence to a defence."

Where the defence takes issue with a fact set out in the particulars of the claim, and the claimant accepts that the fact is incorrect, the proper course should be for the claimant to seek to amend his statement of case accordingly ... and not to deal with the matter in the reply. Thus where for example, the particulars of claim contain an error as to the quantity of goods ordered, and the correct quantity is set out in the defence, the error should be corrected by way of amendment, rather than reply."

- [47] In light of the above quotation, the question then becomes whether or not the Reply is so defective as to warrant striking it out in its entirety.
- [48] Looking at the Reply, I find that it responds properly to paragraphs 2, 4, 5, 8, 9, 10, 11, 12 and 13 of the Defence, although in some respects the paragraphs are inelegantly framed, which is not fatal. The Reply does not seem to respond to paragraph 7 of the Defence, but to me, this is not necessary. I do not find that the Reply is inconsistent with matters set out in the Claim, or that it has introduced a new type of claim. However, it would appear that the Particulars of Malice contained in the Reply would be better addressed in the Statement of Claim, and the Claimant might wish to take appropriate steps to amend the Claim accordingly.
- [49] As I have indicated above, striking out is only to be done in plain and obvious cases. I am not satisfied that it is plain and obvious that the Reply is so incurably bad that it should be struck out in its entirety. Furthermore, this matter has only progressed to the stage of the filing of a Reply to the Defence. No case management conference has been held. So it is still open to the Claimant to make necessary amendments if he so wishes. Also, no disclosure has yet been made and no witness statements have been filed or exchanged.
- [50] In **Eastern Caribbean Flour Mills v Boyer** (2006) Saint Vincent and the Grenadines Civil Appeal No. 12 of 2006 at Para 42 - 44, the Court of Appeal emphasized that the pleadings must set out the general nature of the party's case. It must set out the allegations of fact. It

must let the other side know what case it has to meet. Witness Statements then serve the requirement of providing details or particulars of the pleader's case.

- [51] In all the circumstances of this case, I propose to refuse the application to strike out the Reply, and leave it to the Claimant to take whatever remedial steps he would wish to take.

Conclusion

- [52] Prima facie, the words complained of are capable of bearing the meaning ascribed to them in paragraph 7 (a) and (c) and paragraph 8 of the Statement of Claim.

- [53] Paragraph 7 (b) of the Statement of Claim is struck out.

- [54] The Claimant is granted leave to amend the Statement of Claim to give particulars of extrinsic facts or circumstances including special knowledge, being relied on by the Claimant as creating the legal innuendo pleaded by the Claimant in paragraph 8 of the Statement of Claim that the Claimant lacked integrity when he served as Prime Minister", or that the Claimant displayed unpatriotic conduct.

- [55] The Claimant is granted leave to amend the Statement of Claim to give particulars of the words complained of and extrinsic facts or circumstances, including special knowledge, being relied on by the Claimant as creating the "malice" pleaded in paragraph 9 of the Statement of Claim by 10th June 2010.

- [56] The Defendant may make consequential amendments to the Defence within 7 days of service.

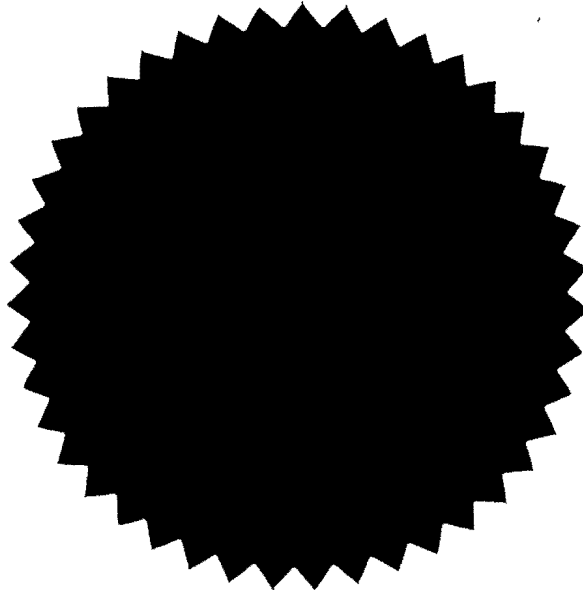
- [57] Paragraph 12 of the Statement of Claim is struck out.

- [58] The application to strike out the Reply is denied.

[59] Success was divided. Therefore, each party must bear his own costs.

[60] Both parties have furnished the court with comprehensive submissions and authorities for which I am thankful.

[61] The matter is adjourned to 29th June 2010 for first case management conference.



Pearletta E. Lanns
PEARLETTA E. LANNS

Master