

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2006/0028

BETWEEN:

GRENADA TODAY LIMITED

Claimant/Applicant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant/Respondent

Appearances:

Hugh Wildman and A. Olowu for the Applicant/Respondent
Anselm Clouden for Respondent/Claimant

2008: April 14

DECISION

[1] **HENRY, J.:** By Fixed Date Claim Form filed herein, the claimant seeks the following relief:

1. A declaration that Section 377 (c) of the Companies Act 1994, Act No. 35 of 1994 of the Laws of Grenada, which provides that a company may be wound up by the High Court "if the company is unable to pay its debts," is void for inconsistency with the provisions of Section 10 of the Constitution of Grenada guaranteeing freedom of expression.
2. A declaration that Section 10 of the Constitution of Grenada has been contravened in relation to the claimant Grenada Today Limited by the enactment of Section 377 (c) of the Companies Act 1994.
3. Damages.
4. Further or other relief.

5. Costs.

- [2] The respondent now applies to the court for an order that the action be struck out as being frivolous, vexatious and an abuse of the process of the court. The respondent also seeks an order that the declarations sought by the claimant contravenes the provision of section 6 (6) (iv) of the Constitution.

Background

- [3] In September 2003, judgment was obtained by the Honourable Prime Minister of Grenada in a libel action against the claimant herein in the amount of \$100,000.00. The Court of Appeal subsequently increased the award to \$150,000.00 plus cost of \$21,000.00. Efforts to enforce the judgment were unsuccessful and the Honourable Prime Minister thereafter instituted proceedings pursuant to Section 377 (c) of the Companies Act to have the claimant company wound up on the grounds that it was unable to pay its debt. Claimant then instituted these proceedings challenging the constitutionality of the relevant provision of the Companies Act.

- [4] Counsel for the claimant asserts that the court cannot strike out the action as frivolous and vexatious as this goes to the merits of the action and the court, he insists, does not have the right to deal with the merits on a preliminary point.

- [5] Rule 26.3 and 26.4 of the Civil Procedure Rules 2000 deal with the court's power to strike out a statement of case. Rule 26.3 (1) reads in relevant part:

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) ...

(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 ...

(d)

- [6] The Court of Appeal in **Spencer v Attorney General** and others (1999) 3 LRC 1 sets out the approach to be taken by a trial judge on an application to strike out in a constitutional

action. While that decision dealt with Order 18, rule 19 of the old Rules of the Supreme Court, Part 26.3 and 26.4 has now replaced the old rule and is now relevant. The Court of Appeal in the Spencer Case upheld the decision of the trial judge. The court held that the trial Judge had exercised his discretion properly in disposing of the matter at the first opportunity. Byron, CJ stated at page 10:

“Regardless of the length or difficulty of the argument, which has already been concluded the operative issue for determination must be whether there is a ‘scintilla of a cause of action’. If the pleadings disclose any viable issue for trial then we should order the trial to proceed but if there is no cause of action we should be equally resolute in making the declaration and dismissing the appeal.”

- [7] The court will therefore examine the pleadings to determine whether there is a ‘scintilla of a cause of action’ or whether the action is indeed frivolous, vexatious or an abuse of the process of the court.
- [8] The pleadings in the matter consists of a Fixed Date Claim Form headed Notice of motion which is supported by an Affidavit sworn to by George Worme, Managing Director of claimant. The entire affidavit comprises 9 short paragraphs.
- [9] Paragraphs 1 and 2 state that the affiant is duly authorized to make the affidavit and that so far as the content is within his personal knowledge, it is true; and insofar as it is not within his personal knowledge it is true to the best of his knowledge, information and belief.
- [10] Paragraph 3 states that the affidavit is in support of the motion and gives the date of the incorporation of claimant under the Companies Act.
- [11] Paragraph 4 informs us of the main business of the claimant and paragraph 5 declares that the newspaper has a wide circulation both nationally and internationally and disseminates needed information to the public.
- [12] Paragraph 6 gives a brief history by acknowledging that judgment was obtained on 25th September, 2003 in the previous action **Keith Mitchell vs Steve Fassihi, George Worme and Others**.

[13] Paragraphs 7 and 8 are the only ones concerned with the allegation that Section 377 (c) of the Companies Act violates the claimants rights under section 10 of the Constitution. I shall therefore set them out verbatim.

“ 7. That I am advised and verily believe that the Judgment Creditor is intent on winding up Grenada Today Limited notwithstanding the right of the publisher in a free and democratic society to disclose information especially the conduct of those who hold office in government and who are responsible for public administration. Such person must always be open to criticism in the printed press and that by invoking the provisions of section 377 (c) of the company Act 1994 is indeed an attempt to stifle or fetter such criticism and to political censorship of the most insidious and objectionable kind.

8. That section 377 (c) of the Companies Act, is repugnant to and ultra vires section 10 of the Constitution of Grenada.”

[14] Paragraph 9 simply reiterates that the affidavit is in support of this action.

The Law

[15] Section 10 of the Constitution provides:

“10. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

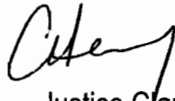
(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts

(c) And except so far as that provision or, as the case may be, the thing done under the authority therefore is shown not to be reasonably justifiable in a democratic society.”

- [16] The applicant submits that the enforcement of the debt by the Prime Minister, in these circumstances, is a legitimate and rational attempt to protect his reputation against scurrilous and scandalous abuse by persons such as the Claimant; that Section 377 (c) of the Companies Act is an appropriate limitation placed on the right of freedom of expression as contained in Section 10 of the Constitution and that such a limitation is neither arbitrary nor excessive. Furthermore, that the constitutional motion fails to take into account the clear language of Section 6 (6) (iv) of the Constitution.
- [17] The fundamental right of freedom of expression is not an absolute right. Chapter 1 recognizes limitations on all the fundamental rights and freedoms and Section 10 (2) specifically sets out certain limitations on the right of freedom of expression. Among the recognized limitations on freedom of expression are laws which make provision for the protection of the reputations, rights and freedoms of other persons. Libel laws fall into this category of provisions which do not contravene Section 10 of the Constitution. The previous action in which judgment was obtained by the Honourable Prime Minister is a demonstration of this.
- [18] Section 377 (c) of the Companies Act makes provision for a company that cannot pay its debts be wound up by the court. According to the authors of Palmer's Company Law Twenty fifth Edition, 1992 Part 15.210 "... this is a ground that is frequently employed by unpaid creditors. Their standing to invoke the process of winding up rests upon the fact of their being unpaid creditors of the company, coupled with the legal consequences that follow from a debtor's failure to pay a debt that is due." Inherent in the provisions of the Companies Act is provision for a company against whom a petition for winding up has been filed to rebut the prima facie evidence by proof that it can in fact pay its debts. Simply because the business of the claimant company is a newspaper involved in the dissemination of information to the public does not exempt it from the obligation to pay its debts, especially not a judgment debt. Since laws which make provision for the execution of judgments or orders of a court are recognized in the Constitution.

[19] The Court must conclude that paragraphs 7 and 8 do not disclose 'a scintilla of a cause of action,' the Court will therefore grant the application to strike. In light of this, the Court need not consider the second limb of the application.

[20] Accordingly, the application to strike out the constitutional motion is granted, and the action is hereby struck out. No order for cost.


Justice Clare Henry
HIGH COURT JUDGE