

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SVGHCV 2010/0206

BETWEEN:

OLIN DENNIE

Claimant

and

[1] CECIL MC KIE

[2] ST.HILL INSURANCE CO.LTD

Defendants

Appearances:

Mr. Carlyle Mc. Dougan for the Claimant

Ms. Patinna Knights for Defendants

2011: June 23;
September 30.

DECISION

- [1] **ACTIE, M. [AG.]:** This is an application for striking out the defendants defence.
- [2] By notice of application with affidavit in support filed on 14th April 2011 the applicant/claimant applied to the court pursuant to **CPR 2000** Part 26.3(1)(b) for an order that the defendants respective defences as filed did not establish reasonable defences to the claimant's claim and or indeed any reasonable ground for defending the said claim and should be struck out and judgment be entered for the claimant for the payment of damages and costs.

Background facts

- [3] The claimant a lawyer by profession filed a claim form on 16th June 2010 and an amended claim form on 13th July 2010 respectively claiming against the defendants' aggravated and exemplary damages for libel contained in two (2) typed letters dated 23rd January 2009 and 5th March 2009, respectively written and signed by the first named defendant as managing director acting for and on behalf of the second named defendant.
- [4] The letters contained complaints against the claimant by the second named defendant to the President of the Saint Vincent Bar Association, Mrs. Kay Bacchus Browne. The letter was also copied to Ms. Nicole Sylvester of Caribbean International Law Firm who was the solicitor for the second named defendant.
- [5] The words complained of in the letter of 23rd January 2009 are as follows:-
- (i) "We view Mr. Dennie's action as unethical and fraudulent and we wish that this matter be brought to the attention of the Saint Vincent Bar Association and if needed to the attention of the Chief Justice".

The words complained of in the letter of 5th May 2009 are as follows:-

- (ii) "We should also point out that we had various recent discussions with Mr. Ronald Woods and he has lamented the fact that he has signed over all three cheques totaling EC\$ 90,000.00 to Mr. Dennie thus far but yet he had benefited very little from these funds. He pointed to the fact that Mr. Dennie had paid for his operation in Trinidad (US\$10,517.00) but other than that he had received very little money from these three payments. He also provided his National Commercial Bank Book # 1105379 which reflected only small deposits to substantiate his claim. He was also not privy to what or where the money was placed. He further indicated that Mr. Dennie had promised to rebuild his house at Georgetown but up to this time he was at a loss on the status of construction as nothing at all had been done and Mr. Dennie had told him nothing within recent times.

This situation further compounds the fact that that Mr. Dennie did not negotiate with us in good faith as he withheld critical information that prejudiced the settlement arrived at. We therefore ask that the Saint Vincent Bar Association intervene in this matter as we are of the opinion that we have been cheated by Mr. Dennie on this matter."

- [6] At paragraph 3 of the Statement of Claim the claimant claimed that the words complained of in paragraph 4 (i) herein in their natural and ordinary meaning meant and were understood to mean that the claimant acted contrary to established, rules, concepts and traditions of his profession and was unscrupulous in professional conduct. Further, the claimant was guilty of fraud and an intention to deceive.
- [7] The claimant claims at paragraph 4 of the Statement of Claim the that the words complained of by their natural meaning and by way of innuendo meant and were understood to mean that the Claimant had obtained benefits by deception and had fooled and tricked his brother Ronald Woods who grieved over dealings with the claimant who by implication was guilty of theft. Further the claimant tricked and deceived the defendants and in doing so gained an unfair advantage over them by virtue of the deception.
- [8] The defendants in their defence entitled "DEFENCE OF FIRST AND SECOND NAMED DEFENDANTS" pleaded as follows:-
- (i) Save and except that the Defendants have no knowledge of the number of years experience the Claimant has, paragraph 1 of the Statement of Claim is admitted.
 - (ii) Paragraph 2 of the Statement of Claim is admitted.
 - (iii) Save that the letter dated 23rd January 2009 was type-written and signed by the First Named Defendant on behalf of the Second Named Defendant and sent to Ms. Nicole Sylvester of Caribbean International Law Firm containing the words as stated in paragraph 3 of the Statement of Claim, paragraph 3 is denied.
 - (iv) The Defendants avers that the words as stated at paragraph 3 of the Statement of Claim were not written falsely and/or maliciously. The Defendants further denies that the words complained of bore or are capable of bearing any of the meanings alleged in paragraph 3 of the Statement of Claim or any meaning defamatory of the Claimant.
 - (v) The Defendants denies that the words as alleged at paragraph 3 were

published; further and/or alternatively if published was an occasion of qualified privilege.

PARTICULARS

- (1) The Second Named Defendant of which the First Named Defendant at all material times was the General Manager is a client of Caribbean International Law of which s. Nicole Sylvester is a Barrister-at-Law, Solicitor, Notary Public and the Managing Partner.
- (2) The letter dated 23rd January was written by the **First Named Defendant** on behalf of the **Second Named Defendant** and sent to the intended recipient being Ms. Nicole Sylvester of Caribbean International Law Firm as communication between client and solicitor for the purpose of litigation and /or legal advice.
- (3) In the premise the Defendants were under a duty to make the communications with their solicitor, Nicole Sylvester, and Nicole Sylvester had a corresponding duty or interest to receive it.
- (4) In the premise the Defendants, if they did, which is denied, published the words complained of in the reasonable and necessary protection of the Second Named Defendant's interest.
- (5) Save that the letter dated 5th March 2009 was type written and signed by the **First Named Defendant** on behalf of the **Second Named Defendant** and sent to Kay Bacchus Browne in her capacity as President of the Saint Vincent Bar Association containing the words as complained of at paragraph 4 of the Statement of Claim, Paragraph 4 of the Statement of Claim is denied.
- (6) ...
- (7) The defendants deny that the words as alleged at paragraph 4 were published further and/or alternatively, if published, was an occasion of qualified privilege.

PARTICULARS

- (1) The intended recipient of the letter dated the 5th March 2009, Ms. Kay Bacchus Browne was at all material time the President of the Saint Vincent Bar Association and in such capacity is the person charged with dealing with complaints against members of the Saint Vincent Bar of which the **Claimant** is such a member.
- (2) In the premise the **Second Named Defendant** was under a moral, legal and social duty to communicate with the President of the Saint Vincent Bar Association in relation to an alleged complaint against one of its members, namely the **Claimant**.
- (3) Ms. Kay Bacchus-Browne had a corresponding duty and interest to receive the said letter of 5th March 2009.
- (4) Further, the letter was carbon-copied to Ms. Nicole Sylvester, Solicitor of the **Second Named Defendant**.
- (5) In the premise the **Defendants**, if they did, which is denied, published the words complained of in the reasonable and necessary protection of the **Second Named Defendant's** interest.
- (6) Save and except that the **Claimant**, through his Solicitor, submitted a letter dated 6th April 2010 to the **First Named Defendant** as exhibited to the Claim Form and marked "C", **paragraph 5** of the statement of Claim is denied. The **Defendants** denies that the words complained of were maliciously published or published at all, further that the **Defendants** did not have constructive notice of appeal.
- (7) ...
- (8) Save as is hereinbefore expressly admitted or not admitted, the **Defendants** denies each and every allegation of fact or law contained in the Claim Form as though the same were set forth herein and traversed seriatim."

- [9] The claimant is asking the court to strike out the defence on the following grounds:
- (1) The defendants by their defence as filed have pleaded non admissions as to (a) the meaning attributed to the words complained of (b) publication of the words used yet gave no reasons as to why they are unable to admit the same and the reasons for resisting the allegations as they are required to do pursuant to Part 10.5 (5) of the **CPR 2000**.
 - (2) The Defendants failed to appreciate that the claimant claims reliefs against them jointly and severally and in effect entered no defence for the first named defendant.
 - (3) The defendants in their defence failed to set out which (if any) allegations in the claim form or statement of claim the defendants wish the claimant to prove as required by part 10.5 (3). The claimant alleged that the defence of qualified privilege as pleaded for the second defendant is not available to the defendants as pleaded and ought to be struck out for want of privilege.

- [10] The defendants by sworn affidavit filed on 6th May 2011 and written submissions and authorities filed on 17th June 2011 oppose the claimant's application to strike out the defence.

THE LAW

Striking out the Defendant's Defence

- [11] The Court has jurisdiction to strike out a Statement of Case under **CPR 2000** Rule 26 .3(1) which provides as follows:-

"In addition to any 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 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 likely to obstruct the just disposal of the proceedings.”

Additionally, Rule 26.1(2)(1) empowers the Court to dismiss or give judgment on a claim after decision of a preliminary issue.”

Defendant’s Duty to set out Case

- [12] The claimant states that the defence having alleged that the words were not published and if published they were qualified had to comply with the CPR Rules 10.5 (3).

CPR 2000 Rule 10.5 provides for the defendant’s duty to set out his/its case.

- “**10.5** (1) ...
- (2) ...
- (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 or 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 reason for doing so; and
 - (b) If the defendant wants 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.”

- [13] The claimant claims that the defendants have pleaded non admission as to (a) the meaning attributed to the words complained of and (b) publication of the words used yet gave no reasons as to why they are unable to admit the same and the

reasons for resisting the allegations as they are required to do pursuant to 10.5(5). Counsel argued that defendant must respond to each and every item.

- [14] The effect of CPR Part 10.5(5) is concerned with the defendant's duty to set out its case. Where the defendant denies an allegation he must put forward a reason for so doing and if he intends to prove a different version of events must set out that version. Whilst it is established that the defendant, should respond to each allegation made in the claim, it is not necessary or expected that the defendant will literally list the responses in the order set out in the statement of Claim to be regarded as having complied with the rules. I am satisfied that although the defendants began the defence by proffering blatant denial and admissions of the claimant's claim, the defence is redeemed by the setting out their own version of events and have put forward more substantive defences under the rubric "particulars" as required by 10.5(4)(5). In my opinion it is a matter of style. Counsel for the defendants referred to the precedents and forms in the text **Gately on Libel and Slander** 3rd edition for defamation cases which required only succinct statements.
- [15] The Court is of the view that the defence has been made sufficiently clear. No more is required than a concise statement of facts upon which the defendants intend to rely which were stated by the defendants under the "particulars" section in their defence. It is in the witness statements that the details of the defence will be made apparent. The need for expansive pleadings including particulars are now reduced by **CPR 2000** which now requires that Witness Statements be exchanged.
- [16] The claimant avers that the defendants failed to appreciate that the claimant claims reliefs against them jointly and severally and in effect entered no defence for the first named defendant. The claimant in his skeleton arguments in support of application to strike out did not pursue this ground so I do no more than mention that the defence where necessary referred to the defendants jointly and severally

in their respective admission or denial of the claim and also under the “particulars section” in the defence.

Qualified Privilege

- [17] The claimant avers that the defence of qualified privilege as pleaded for the second defendant is not available to the defendants as pleaded and ought to be struck out for want of privilege. The claimant said that in determining whether the words published are qualified the court had to look at the (10) principles that are to be taken into account in determining whether a plea of qualified privilege is available or can be relied on by the defendants. These principles were enunciated by Lord Nicholls in his locus classicus on qualified privilege in the House of Lords judgment **Reynolds v Times Newspapers Ltd. (2000) EMLR Issue 1** and restated in **Loutchansky vs Times Newspaper Ltd. (2000) EWCA Civ. 536**.
- [18] The defendants in their submissions state that the claimants cannot pray in aid of the **Reynolds** case on privilege as this case pertains to what amounts to qualified privilege in “media cases” which is not the situation in this case and as such is not applicable. In **Bristol v St. Rose** Saint Lucia Civil Appeal No. 16 of 2005, Rawlins JA as he then was, held that the **Reynolds** privilege only applies to cases of publication to the whole world.
- [19] **In Adam v Ward [1917] A.C. at 309** it was held that “a privilege occasion is... an occasion where the person who makes a communication has an interest, or a duty, legal, social, or moral, to make it to the person to whom it was made, and the person to whom it is so made has a corresponding interest or duty to receive it. The reciprocity is essential.”
- [20] In this case the letters complained of were written by the first defendant on behalf of the second defendant and sent to Ms. Kay Bacchus Browne as President of the Saint Vincent Bar Association and Ms. Nicole Sylvester of Caribbean International Law Firm as communication between client and solicitor for litigation and/or legal

advice. I conclude that that second named defendant was under a moral, legal and social duty to communicate with the President of the Saint Vincent Bar Association in relation to an alleged complaint against one of its members and to Ms. Nicole Sylvester as solicitor of the defendants.

The Test for Striking Out

[21] Dennis Byron C.J (Ag.) as he then was in **Baldwin Spencer v the Attorney General of Antigua & Barbuda Civil Appeal No. 20 A of 1977** restated the seminal test that should be applied by the Court on an application to strike out when he said:

“This summary procedure should only be used in clear obvious cases when it can be seen on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court”. Striking out has been described as “the nuclear power in the court’s arsenal and should not be the first and primary response of the Court.....”.

The Court must be satisfied that a party or that the statement of case ‘or Defence’ is unable to prove or defend allegations made against another party or that the statement of case or defence is incurably bad or that it discloses no reasonable ground for bringing or defending a case, and has no real prospect of succeeding at trial. The operative issue is whether there is even a scintilla of a defence.

[22] At this stage of the proceedings it is not required to make a determination of the defences available to the defendants on a defamatory claim. However for the purpose of the application to strike out the defence I am of the view that the letters complained of by the claimants sent to Ms. Nicole Sylvester and Mrs. Kay Bacchus were sent as qualified communication. Mrs. Kay Bacchus as President of the Saint Vincent Bar Association in such a capacity was charged with dealing with complaints against members of the Saint Vincent Bar Association, of which the claimant is a member, had a corresponding duty and interest to receive the letter of complaint. Ms. Nicole Sylvester as solicitor for the defendants also had a

corresponding interest to receive privilege correspondence between client and solicitor for the purpose of advice and /or litigation.

[23] The Decision of Remy J. in the case of **Dr. Ralph Gonzalves v Matthew Thomas and BDS Ltd** Saint Vincent High Court Civil Claim No. 64 of 2007 on which the claimant relies on as authority for the striking out of the defence is distinguishable on its facts. In **Ralph Gonzalves** the claimant sought damages and costs against the defendants for slander by words published on radio to persons in St. Vincent and St. Lucia. The defendants failed in defence of qualified privilege as the publication was made to the public at large over the media which is totally different from this matter before the Court.

[24] The court is persuaded to refuse the application made by the claimant to strike out the defence with costs to the defendants in the sum of \$750.00.

Whether the words complained of are defamatory

[25] The defendants by notice of application filed on 7th July 2010 applied to strike out the claim form as against the defendants and further and/or alternatively pursuant to Part 69.4(1) of **CPR 2000** for an order determining whether or not the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case and whether the defence of qualified privilege is sustainable.

[26] At a Case Management Conference held on 15th February 2011, I refused the defendants application to strike out the claim and directed the parties to file submissions inter-alia on whether or not the words complained of are capable of bearing the meaning or meanings attributed to them in the context in which they were used in the statement of claim.

[27] The defendants on 15th March 2011 filed submissions and legal authorities in compliance with the directions. The Claimants did not comply with the directions

but instead when the matter came up for Case Management on 29th March 2011 requested and obtained leave from Master Mathurin to file an application to strike out the defence of the defendants.

[28] The excerpts of the words complained of are at paragraph 5 and I need not restate them. The claimant avers that the words complained of in the letter of 23rd January 2009 given their natural meaning meant and were understood to mean that the claimant acted contrary to established rules, concepts and traditions of his profession and was unscrupulous in his professional conduct. Further, that the claimant was guilty of fraud and an intention to deceive. In the letter of 5th May 2009, the claimant avers the words were understood to mean that the claimant had obtained benefits by deception, had fooled and trick his brother over dealings with the claimant who by implication was guilty of theft and had gained an unfair advantage over them by virtue of deception.

[29] The test the Court is to apply in deciding whether or not a statement is defamatory is:

“to give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable readerreading the article once. The ordinary, reasonable reader is not naïve. He can read between the lines. But he is not unduly suspicious. He is not avid for scandal, he would not select one bad meaning where other non-defamatory meanings are available. The Court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal approach. The intention of the publisher is not relevant”

Per Lord Nicholls in **Bonnick v Morris** (2002) 61 WIR 358.

[30] In **Vance Amory v Hastings Daniel** St. Christopher & Nevis Claim No. 19 of 1999 Edwards J. as she then was at paragraph 23 of her judgment states in construing the meaning of words that:

“They mean what ordinary persons in society would say they mean, bearing in mind the different temperaments, and outlook, ranging from the unusually suspicious to the unusually naïve. I am to regard ordinary persons as persons between these two extremes, who are not avid for scandal. Ordinary persons do not read sensational articles with cautious

and analytical care. They read between the lines, and form general impressions based on their knowledge and experience of worldly affairs. There is a certain amount of loose thinking and jumping to conclusions from ordinary persons."

- [31] The Court finds that words complained of in their natural and ordinary meanings are defamatory of the claimant. The words ascribe professional dishonesty to the claimant. The words imply that the claimant acted unethically to the detriment of the brother by misappropriating the brother's funds without giving full disclosure.

Conclusion

- [32] For the foregoing reasons I order and rule that:
- (1) The application filed by the claimant for the striking out of the defendants defence is refused.
 - (2) The claimant shall pay the defendants costs of the application in the sum of \$750.00.
 - (3) The words complained of are defamatory;
 - (4) The matter is to be listed for a judge in chambers for the first available Case Management for Case Management Directions and thereafter for matter to be listed.


Agnes Actie
Master [Ag.]

