BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

(CIVIL)

CLAIM NO BVIHCV2011/121

VALERIE STEPHENS

Applicant/Claimant
Respondent

AND

[1] JOSEPH ROSAN
(Also known as MATTIE ROSAN JR)

Respondent/First Defendant
Applicant

[2] EDMUND MADURO

Second Defendant

[3] KELVIN TITLEY (DOING BUSINESS AS JAPHIX ENTERTAINMENT AND OR JTV)

Third Defendant

[4] ALEX BUNBURY

Fourth Defendant

Appearances

Mr Menelik Miller for Claimant
Ms Charmaine Rosan Bunbury for First Defendant

Applications and submissions presented by:

Mrs Tana'ania Small-Davis for the Applicant/Claimant/Respondent
Ms Sheryl Rosan for the Respondent/First Defendant/Applicant

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2012: July 18; 2013: February 21
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## Decision

### Introduction

[1] LANNS, M: Pending before the court are two applications. The first in time is the application of the Claimant Valerie Stephens, for an order striking out the Statement of

Amended Defence of the First named Defendant. The second is the cross application of the First named Defendant Joseph Rosan for an order striking out the Claimant's Claim Form and Statement of Claim.

## Background

[2] On 6th June 2011, the Claimant Valerie Stephens, who, at the material time was the Senior Magistrate, filed an Amended Claim Form and Statement of Claim against the Defendants seeking damages for defamation which she says was occasioned during a call in programme entitled "Speak Your Mind". The programme was allegedly hosted by the Second Defendant and broadcast on the Third Defendant's Television Network.

[3] The Claimant also seeks an injunction to restrain all the Defendants from further publishing or broadcasting defamatory words of and concerning her. An interim injunction is currently in place prohibiting all the Defendants from publishing or broadcasting words defamatory of the Claimant.

[4] The allegedly offending words are set out in paragraph 6 of the Statement of Claim; and a full transcript of the programme has been filed in court and served on the Defendants. The allegedly offending words, allegedly spoken by the First Defendant, accused the Claimant of among other things, plotting to use one Tamia Richards, a Magistrate to understudy the Claimant. They also accuse the Claimant of causing trouble for the people of the British Virgin Islands, and they suggest that the Claimant be sent back to Jamaica. The Claimant is further accused of "cooking up the pot" and sending it to the Judicial and Legal Services Commission. The Claimant is also accused of manipulating and playing Virgin Islanders and belittling and putting down the First Defendant's family.

[5] In paragraph 7 of the Amended Statement of Claim, the Claimant sets out what she thinks the words meant and were understood to mean.

[6] The Second and Fourth Defendants did not acknowledge service of the claim, and the Third Defendant did not file a defence. As a consequence, judgment in default was entered up against them. The Third Defendant applied to set aside the default judgment entered up against him. However, his application was dismissed.

[7] On 22nd June 2011, the First Defendant filed a Defence and Counterclaim. The Counterclaim was subsequently withdrawn. The Defence has been amended three times, once without leave, and twice, by court order, based on observations made by the Masters at case management conferences. The Fourth Defence filed on 8th February 2012 was amended pursuant to an "unless" order of Mathurin M. dated 23rd January 2012. It is that Fourth version of the First Defendant's Defence that accounts for the Claimant's present application before the court; and it is that said application which has triggered the First Defendant's cross application to strike out the Claimant's claim.

[8] By his Fourth Defence, (styled "Statement of Amended Defence of First Defendant") the First Defendant denies that the words complained of are defamatory. He denies that the words complained of bear the meaning attributed to them in the statement of claim. He asserts that the words spoken are true, and he pleads fair comment on a matter of public interest.

[9] It is noted that this Defence in its re-amended form does not comply with Practice Direction 3.1; 3.2; 3.3; or 3.4 of Practice Direction No 5 of 2011, in that it is not endorsed with the words "By Order of the Master" and the amendments are not coloured yellow. However, as no issue was taken on that procedural irregularity, I need not dwell on it.

[10] The Claimant's application came up for hearing on 22nd May 2012. Pausing here, I must say that I was not impressed with the temperance exhibited by Ms Rosan during the hearing, and for which she was rebuked. She called Claimant's counsel a liar. I recognize that the First Defendant is the brother of Ms Rosan, and that the matter concerns another of her sibling – Charmaine Rosan-Bunbury who is also a Magistrate. She was therefore emotionally connected. But there was nothing untoward in the

proceeding that warranted that kind of disposition towards Claimant's counsel in the face of the court. Happily, Ms Rosan was remorseful and tendered apologies to the court and to Claimant's counsel.

[11] Coming back to the hearing. During the course of the hearing, counsel for the First Defendant indicated her intention to file an application for an order striking out the Claimant's Amended Claim and Statement of Claim. And she did so file. She did so on 8th June 2012, after the Claimant's application to strike had been part-heard and adjourned for continuation on 20th June 2012. And she did so one year after the filing and service of the Amended Claim Form and Statement of Claim and after the Defence had been amended, re-amended, and further amended.

[12] So, as previously stated, there are two applications pending before the court, namely, the application of the Claimant filed 11th April 2012 for an order striking out the First Defendant's "Statement of Amended Defence filed 8th February 2012; and the cross application by the First Defendant filed 8th June 2012 for an order striking out the Claimant's Amended Claim Form and Statement of Claim filed 6th June 2011.

## Bases of the Claimant's Application

[13] The grounds of the Claimant's application are that

1. The First Defendant has not complied with the terms of CPR 10.5 in that he has not stated the reason for denial of the claim nor has he put forward a different version of events;

2. The First Defendant has not complied with the terms of CPR 69.3 in that he has not provided any particulars stating the facts and matters relied upon in support of the allegation that the words are true.

3. The learned Master made an order on 23rd January 2012 that UNLESS the First Defendant filed and served an amended Defence which complied with CPR Parts 10 and 69 and served an amended Defence and the rules relating to pleadings in a defamation claim, the First Defendant's Defence would be struck out and judgment entered against him.

4 Further, this is the fourth version of a Defence which has been filed by the First Defendant, none of which has been in compliance with the Rules. As a result, the Claimant is prejudiced in the delay in getting this matter progressed.

[14] The Claimant swore to an affidavit in support of her application, and the First Defendant swore to an affidavit in response.

The Claimant's Argument

[15] The Claimant says that the Amended Statement of Defence runs afoul of the Rules. She says that most of paragraph 4 of the First Defendant's "Statement of Amended Defence" is prolix. The Claimant says further that the Statement of Defence is set out in a rambling and disorganized way. It is unfair to the Claimant as the Claimant is entitled to be readily able upon reading the Defence to form a clear picture of the scope and meaning of the defence and should be able to understand what is intended to be relied upon by the First Defendant. The various Defences deployed by the First Defendant are comingled and jumbled and do not assist in a clear understanding of the Defence in a coherent manner.

[16] it is the Claimant's further contention that in his Defence, the First Defendant has extracted the averments in paragraph 6 of the Claimant's Statement of Claim and has set out his own version of the words spoken. None of the extracts in the Defence constitutes a statement of defence against the allegations made in the statement of claim. The Claimant relies on the decision in Rassam v Budge[1] to say that the First Defendant is not

[1] [1890] 1 QB 577

permitted to set out his own version of the words spoken and then plead that those words are true.

[16] The Claimant contends that paragraphs 5 and 6 of the Statement of Defence offend the fundamentals of pleading in defamation claims in that the defences of justification and fair comment are pleaded and rolled together in one jumble. This is not permissible because the defences of justification and fair comment are two distinct and separate defences which are based upon separate and distinct legal principles. For this submission, the Claimant relies on Gatley on Libel and Slander, 10th edition, paragraphs 12.3 and 12.6.

[17] The Claimant further contends that none of the matters set out in paragraph 6 of the Statement of Amended Defence is a properly pleaded fact. At best, they may be described as opinion and have been erroneously and misleadingly described as statements of facts.

First Defendant's argument

[18] The First Defendant contends that the Statement of Amended Defence complies with CPR 10.5 and CPR 69.3.

[19] In relation to CPR 10.5, the First Defendant says that he has set out the facts he intends to rely on to dispute the claim by explaining in detail what was said as opposed to what the Claimant claims he said. Also, the Claimant explained in detail how what he said was punctuated as opposed to how the Claimant claims it was punctuated. Further, the First Defendant explained what related to the Claimant as opposed to what is claimed to be related to the Claimant. And he provided documentation to support the statements, opinions and comments made by the First Defendant.

[20] As regards CPR 69.3, the First Defendant contends that he has given particulars of the words that he says are true in substance and in fact, and that are fair comment on a matter of public interest.

[21] In relation to the unless order, the First Defendant says that he complied with that order and since doing so, the matter came back before the master who did not strike out the Statement of Amended Defence but took the matter to the next stage by giving leave to either party to apply for a determination on meaning along with any other application that may be deemed necessary. It was for the Claimant to file the application for meaning since she has a duty to prove her case, contended counsel for the First Defendant. First Defendant's counsel reasoned that if the master was dissatisfied with the Statement of Amended Defence, she would have applied the sanctions of the 'unless" order.

[22] The First Defendant further submitted that the Claimant has not established any basis on which prolixity can be relied as a reason for striking out the defence

[23] The First Defendant was of the opinion that the Claimant's application should be dismissed in accordance with the rationale of the court in Lennox Linton v Anthony et al[2] and Hector v Joseph[3] which is to the effect that striking out a case is a jurisdiction that must be exercised sparingly and cautiously as the exercise of this jurisdiction deprives a party of his right to a trial and his ability to strengthen his case through other court procedures.

## Discussion and decision

[24] In their respective written submissions, the parties set out the rules applicable to striking out. I have taken cognizance of them and need not repeat or reproduce them.

[25] It is well established that pleadings in a defamation claim assumes special status. Pleadings must let the other side know the case he or she has to meet. On examination of the Statement of Amended Defence, I am not of the view that the Statement of Amended Defence meets that criterion. I have considered the application of the Claimant; and I have considered the evidence put forward in the affidavits in support of and in opposition to the

[2] DOMHCV2008/436
[3] Dominica Civil Appeal No 6 of 2003

application; I have also considered the submissions of the parties, and I am in agreement with the submission on behalf of the Claimant that the Defendant's defence is defective as alleged, and I conclude that paragraphs 4, 5 and 6 of the Statement of Amended Defence should be struck out in their entirety as these paragraphs are scandalous and vexatious; factually hopeless and do not disclose any reasonable ground for defending the claim.

[26] Additionally, I accept and conclude that the First Defendant has failed to properly set out the defences of fair comment and justification in a manner that would enable the Claimant to properly reply. As currently drafted, the pleadings cannot stand.

[27] I am of the opinion that the case is an obvious one in which to strike out the Statement of Amended Defence for non compliance with Rule 69.3 and for disclosing no reasonable ground for defending the claim and for prolixity; I therefore propose to strike out the Defence and enter judgment for the Claimant for damages to be assessed. Normally, I would have granted leave to amend the Defence, but I am not inclined to do so given that the Defendant has been afforded ample opportunity to make necessary amendments and have still not disclosed any reasonable ground for defending the claim.

[28] In light of my findings, it is unnecessary to consider the application of the First Defendant. However, in case I am found to be wrong in striking out the first Defendant's Statement of Amended Defence, as I have proposed to do, I will go on to consider the First Defendant's application.

## Consideration of the First Defendant's Application to strike out the Claimant's Claim

[29] The First Defendant puts forward 7 grounds of application summarised thus:

1. The Claimant has not complied with CPR 69.2 in that she has failed to give particulars of facts and matters relied on in support of the allegation that the words of the First Defendant were made in a defamatory sense;

2. The Claimant has not complied with the terms of CPR 10.9 in that she has failed to file a Reply to the First Defendant's Defence at least 14 days before the Case Management; and has not applied for permission to file such Reply; The inference is that the Claimant is not interested in seeing he matter progress;

3. The Claimant has not filed an application for meaning of the words alleged to be defamatory by 13th April 2012 as ordered by the court on 19th March 2012; and by this failure she has shown that she is disinterested in seeing the matter progress.

4. The Claimant has shown no interest in the matter as indicated by her absence in Court.

[30] The First Defendant swore to an affidavit in support of his application and the Claimant swore to an affidavit in response.

Disposition of the First Defendant's Application to Strike

[31] Having read the application, and having considered the evidence and the submissions of the parties, and upon examination of the Claimant's Statement of Claim, the court is of the opinion that the First Defendant's application is devoid of merit and proposes to dismiss it for the following reasons:

1. The First Defendant has already filed four Statements of Defence to the claim. It is not proper, one year later, after having filed four defences, (none of which, to my mind discloses any reasonable ground for defending the claim) for him to apply to strike out the Claimant's claim. This, to my mind, is a form of abuse of the court's process, which the court should not countenance.

2. In my opinion, the Claimant has properly complied with CPR 69.2 (a) in that she has given sufficient particulars of the publication in respect of which the claim is brought to enable them to be identified. As to CPR 69.2 (b) there appears to be a complete misconception on the part of the First Defendant as to what rule 69.2 (b) states. CPR 69.2 (b) relates to where the Claimant is relying on innuendo meaning. The Claimant is relying on the natural and ordinary meaning of the words.

2. The First Defendant seems to be unaware of the repeal and substitution of Rule 10.9 effective 1st October 2011; and which is in the following terms;

> "10.9 Reply to defence
>
> (1) A claimant may file and serve a reply to a defence -
>
> (a) 14 days after the date of service of the defence; or
>
> (b) at any time with the permission of the court.

3. The effect of Rule 10.9 is that the filing of a reply is not mandatory and with the court's permission, a reply may be filed at any time. Furthermore, the Claimant stated in her affidavit in response that the reason for the absence of the reply is because the Statement of Amended Defence is so poorly drafted;

4. An application for meaning may be made by either side. There is no evidence before the court that the master expressly ordered the Claimant to file an application to determine meaning.

5. 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 … "

## Conclusion

[32] It is ordered that

[1] The application by the Claimant is granted.

[2] The Statement of Amended Defence is struck out as disclosing no reasonable ground for defending the claim; and for prolixity.

[3] The application by the First Defendant is dismissed.

[4] Judgment is entered for the Claimant for damages to be assessed.

[5] The Claimant is at liberty to apply for an assessment of damages.

[6] The Claimant is entitled to costs of the Applications which I fix at $2000.00.

Pearletta E Lanns

Master