THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)

SUIT NO: NEVHCV2013/0118

BETWEEN:

Mark Brantley - Claimant

vs.

Hensley Daniel – 1st Defendant
Clement "Junie" Liburd Trading as Freedom 106.5FM – 2nd Defendant

APPEARANCES:

Ms. Dia Forrester for the Claimant.

Mr. Sylvester Anthony with Ms. Angelina Gracy Sookoo for the 1st Defendant.

The 2nd Defendant is absent and not a party to this Application.

DECISION

2014: May 28
2014: July 03
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[1] **WILLIAMS, J. (Ag)**: On the 17th November 2013, the Claimant instituted proceedings against the 1st and 2nd Defendants seeking

Damages for slander based on a Statement made by the 1st Defendant during a radio programme broadcasted and hosted by the 2nd Defendant called "Issues St. Kitts and Nevis".

[2] On the 11th November 2013, the 1st Defendant was served with the Claim Form and Statement of Claim together with accompanying Forms.

[3] On the 24th November 2013, the 1st Defendant filed an Acknowledgment of Service Claim Form in which he indicated that he intended to defend the Claim.

[4] On the 25th November 2013 the 1st Defendant wrote to the Claimant requesting that the Claimant provide him with a Transcript of the entire Statement wherein the alleged defamatory remarks were made by him.

[5] On the 28th November 2013 the Claimant's solicitors responded to the 1st Defendant indicating to him that the Rules of the Court made specific provisions with respect to disclosure of Information which he sought and it was not for the Claimant to furnish him with what he said.

[6] The 1st Defendant's Defence was due to be filed and served on the 11th December 2013.

[7] On the 16th December 2013, the Claimant filed an Application for Judgment in default of Defence, a request for Default Judgment and an Affidavit sworn to by Viyana Gumbs, clerk to Counsel for the Claimant.

[8] On the 8th January 2014, the 1st Defendant was served with a request for Judgment to be entered for failure to file a Defence.

[9] On the 10th January 2014, the 1st Defendant filed a Defence to the Claimant's Claim with a Certificate of Truth dated the 8th December 2013.

[10] On the 20th January 2014, the 1st Defendant filed an Application with supporting Affidavit for an Extension of Time to file a Defence and for his Defence filed on the 10th January 2014 to be deemed properly filed.

[11] **On the 25th February 2014** the Claimant's application for Default Judgment was heard by the Court and on the **12th March 2014**, the Court granted the Application for Judgment in Default of Defence and considered that the Defence of the 1st Defendant was not properly before the Court having been filed without leave of the Court and that a Request for Judgment in Default had already been filed since the 16th December 2013.

[12] On the 17th March 2014, the 1st Defendant filed a Notice of Application with supporting Affidavit to set aside the Default Judgment of the 12th March 2014.

[13] On the 27th March 2014 the Claimant filed an Affidavit in Opposition to the 1st Defendant's application to set aside the Judgment of the 12th March 2014.

ISSUES

[14] 1. Whether the Court should exercise its discretion under Rule 13.3 (1) of the CPR and set aside the Judgment in Default.

2. What are the conditions to be satisfied for a Default Judgment to be set aside.

3. Whether the 1st Defendant has satisfied the conditions for the Default Judgment to be set aside as contemplated by Rule 13.3 (1) of the CPR.

THE LAW

[15] Rule 13.3 of the CPR 2000 sets out the conditions to be satisfied if a Court is to set aside a Judgment entered under Part 12; the Rule states as follows:

1. If Rule 13.2 does not apply, the Court may set aside a Judgment entered under Part 12 only if the Defendant-

a. Applies to the Court as soon as reasonably practicable after finding out that Judgment has been entered;

b. Gives a good explanation for the failure to file an Acknowledgment of Service or a Defence as the case may be; and

c. Has a real prospect of successfully defending the Claim.

2. In any event, the Court may set aside a Judgment entered under Part 12 if the Defendant satisfies the Court that there are Exceptional Circumstances.

[16] It is well settled Law that the three conditions under Rule 13.3 (1) are conjunctive. Therefore the Defendants must satisfy all of the three criteria set out in the Rule for the Court to exercise its discretion to set aside the Default Judgment.

[17] In the case of **Kenrick Thomas vs. RBTT Bank Caribbean Ltd. Civil Appeal No.3 of 2005**, **Justice of Appeal Barrow SC** stated at paragraph 7;

"..... The discretion in CPR 2000 is severely limited it specifies three conditions that the Defendant must satisfy before the Court is permitted to set aside a Default Judgment"

And at Paragraph 10 of the said Judgment **Barrow J.A** further stated

"This Court has clarified that the overriding objective does not allow the Court to ignore clear rules. The language that the rule makers chose to frame Part 13.3 (1) was considered and deliberate; there is no possibility that its purport was unintended. Litigants and lawyers must now accept that CPR 2000 has gone significantly further than the English Rules in the hardening of attitudes towards the lax practice that previously prevailed in relation to setting aside of Default Judgments which was an identified abuse that the new Rules of Court were intended to correct. The adherence to the Timetable

provided by the Rules of Court is essential to the orderly conduct of business, and the importance of adherence is reflected in CPR 2000 imposing pre-conditions for setting aside a Default Judgment. If the pre-conditions are not satisfied, **the Court has no discretion to set aside**."

[18] The first criteria of Rule 13.3 of the CPR is that the Defendant applies to the Court as soon as reasonably practicable after finding out that the Judgment had been entered.

Learned Counsel for the Applicant has submitted that the Applicant acted with extreme promptitude thereby satisfying the threshold of 13.3 (1) (a) of the CPR 2000 (as amended) in that his Application to set aside the Judgment was filed on the 17th March 2014 and the Judgment in Default of Defence was dated and entered the 12th March 2014.

[19] In the case of **Louise Martin vs. Antigua Commercial Bank ANU/HCV 1997/0115.** The Court found that a period of 15 days between being served with the Judgment and the filing of the Application to set it aside was "as soon as reasonably practicable" for the purposes of Rule 13.3 (1) (a) of the CPR 2000.

[20] In **Earl Hodge vs. Albion Hodge BVIHCV2007/ Hariprashad-Charles J.** found that a period of thirteen (13) days between being served with the Judgment and the filing of the application to set aside the Judgment was "reasonable". Also in **Curthwin Webster vs. Preston Bryan AXAHCV2008/0020 Small-Davis J** found that on the facts before her,

sixteen days was a reasonable time between being served with the Judgment and the filing of the Application.

[21] In relying on the cited authorities, the Court considers that the period of five days having elapsed to file and serve the Defence after the Judgment was entered, was a period of "extreme promptitude" and concurs with Learned Counsel for the Applicant on this submission. I must also note that the Claimant has **not** taken issue with respect to the time when the Application to set aside the Default Judgment was filed.

[22] **Rule 13.3 (1) (b)-**

Gives a good explanation for the failure to file a Defence. The Defendant must satisfy the Court that he has a good explanation for failing to file a Defence during the stipulated time.

The Privy Council decision in the case of **The Attorney General vs. Universal Projects Limited P.C Appeal No: 0067/2010 [2011] UKPC 37** is instructive on this issue and was adopted by the Eastern Caribbean Court of Appeal in **Sylmord Trade Inc. Vs. Inteco Beteiligungs AG BVIHCMAP2013/003 by Michel J.A.**

The Learned Michel J.A. quoted Lord Dyson in the **Attorney General vs. Universal Projects Limited** when he stated that;

"If the explanation for the breach... connotes real or substantial fault on the part of the Defendant, then it does not have a good explanation for the breach."

[23] The Learned Michel J.A in the said **Sylmord Trade Inc.** [1] case provided a definition of "good explanation" in the context of Rule 13.3 (1) and stated the following;

"An account of what has happened since the proceedings were served which satisfied the Court that the reason for the failure to acknowledge service or serve a Defence is something other than mere indifference to the question whether or not the Claimant obtains Judgment. The explanation may be banal, and yet be a good one for the purposes of CPR 13.3. Muddle, forgetfulness and administrative mix up, are all capable of being good explanations, because each is capable of explaining that the failure to take the necessary steps was not the result of indifference to the risk that Judgment might be entered."

[24] In the most recent case of **Mitchell vs. News Group Newspapers Ltd. [2014] 2 A.E.R 430 Court of Appeal Civil Division U.K** Lord Dyson stated inter alia that;

"The Court will start by considering the nature of the non compliance with the relevant rule; practise direction or Court Order. If this can properly be regarded as trivial, the Court will usually grant relief provided than an application is made properly. Thus the Court will usually grant relief if **there has been no more than an insignificant failure of form rather than substance** or where the party has missed the deadline imposed by an Order or rule, but has otherwise fully complied with its terms. We acknowledge that even the question of whether a default is insignificant may give rise to dispute

[1] **AG BVIHCMAP2013/003 by Michel J.A.**

and therefore to contested applications. But that possibility cannot be entirely excluded from any regime which does not impose rigid rules from which no departure, however minor is permitted."

[25] The Applicant in his Affidavit in Support of his Application to set aside the Judgement filed on the 17th March 2014 has advanced reasons to show that he has a good explanation for his failure to file a Defence by the 11th December 2013. He also submits that his failure to meet the deadline was not indifference but due to the financial constraints he faced, and that he was a litigant in person.

[26] The Claimants state at paragraph 24 and 25 of their written submissions that the 1st Defendant has offered no explanation for the Defence not being filed before the 11th December 2013, and also that during the entire month of December, the Defendant took no steps to file his Defence.

The Claimants further submit that the 1st Defendant was properly served with a Claim Form and Statement of Claim and the notes that accompany the forms, which clearly set out the time period within which the documents must be lodged with the Court.

The Claimants also contend that the Defendant filed an Acknowledgment of Service within the required time, prepared and signed a Defence but never filed it for inexplicable reasons, and took an indifferent stance as to the possibility that Judgment in Default could be entered against him.

[27] The Applicant/1st Defendant has claimed that he was unable to file the Defence in time due to the following reasons.

(a.) That he was unable to retain Counsel in the matter due to his impecunious nature and was therefore forced to act in person.

(b.) On the 25th November 2013, he wrote to the Claimant requesting a transcript of the entire speech made by the Applicant/1st Defendant on the 29th July 2013. In the said letter the Applicant indicated that in order to properly defend the Claim, he would like the Claimant to provide him with a transcript of the entire interview, because it was important that the words complained of were taken in context.

[28] The Applicant/1st Defendant contends that the Claimant's solicitors wrote to him the 1st Defendant on the 28th November 2013 informing him that it is was not for their client to furnish him with a transcript of words spoken by him, and referred him to the Rules of Court for guidance as to how requests for Disclosure of Information ought to be made.

[29] According to the Applicant/1st Defendant on the 4th January 2014, an employee/agent of the 2nd Defendant sent the 1st Defendant by e-mail an audio recording of the said programme. (Exhibit HD2). The 1st Defendant claims he could not access the said audio recording and it therefore had to be resent to him on the 7th January 2014 (Exhibit HD3).

[30] The 1st Defendant claims that it took almost two days to transcribe the audio recording and to do the Research on the principles of Law to enable him to respond to the Claimant's Claim.

[31] On the 8th January 2014, the 1st Defendant deposed that he was served with the Request for Judgment in Default of Defence by the Claimants while he was still finalizing his Defence. He then filed an Incomplete Draft defence on the 10th January 2014 and an Application for Extension of Time to file a Defence on the 20th January 2014.

[32] The Court therefore holds the respectful view that the Applicant/1st Defendant has provided the Court with an explanation for the failure to file his Defence within the stipulated time.

His explanation is reasonable it is not banal, or muddled in that he was a litigant in person apparently trying to navigate the complex ocean of the Civil Procedure Rules, and was impecunious in the process of doing so.

[33] Under Rule 1 (1) (c) (iv) it states, the overriding objective of the Rules is to enable the Court to deal justly with a case and in so doing, the Financial position of each Party must be considered. In the case of **Timothy Mc Kree vs. Raphael Quashie Claim No. 476 of 2010** Justice Monica Joseph accepted the explanation that the Defendant "desired to file a defence but had no money so to do".

[34] On the other hand in the case of **Alvin Edwards, Cyril Maundy vs. Willoughby Bay Beach Resort Ltd et al Claim No. ANUHCV2011/0427** Cottle J at paragraph 8 of his Judgment stated inter alia that challenges in obtaining documents is not a good reason for failing to file a Defence. He stated that; "The reason advanced is that there were challenges experienced in obtaining documents necessary to avoid embarrassment in his Defence. If

the Defendants have no information as to any facts which they rely to defend the Claim, I cannot see how a search for facts which may or may not support a possible defence affords a good reason for failing to defend. Such defendants may never find the information they seek. For how long should the Court and the Claimants wait while such a search is carried out?"

[35] Again in the case of **The Right Honourable Dr. Denzil Douglas vs. The Democrat Printing Co. Ltd Claim No. SKBHCV2012/0076**

Master Pearletta Lanns did not consider that the Defendant had given a good explanation for its failure to file a Defence within the time limited by the Rules of the Court. The Learned Master stated that; "The Affidavits are hollow and they needed to go further to say what steps they took in order to file a Defence. What the Court finds is that failure to file a Defence on time was due to a lack of diligence on the part of the Defendants Counsel."

[36] Learned Counsel for the Applicant/1st Defendant submits that the Applicant/1st Defendant did everything he could do to file a Defence and even after consulting two lawyers, he set about preparing a Defence on his own behalf. Counsel contends that this did not show Lax or Indifferent behaviour as he took the necessary steps in order to file a Defence.

[37] I therefore accept the explanation given by the 1st Defendant and the submissions of his Counsel and note his efforts at complying with the CPR even in the absence of legal representation. I consider further that in the light of the cited authorities, and the preferred reasoning of Justice Monica Joseph

in **Timothy McKree vs. Raphael Quashie**, the Defendant has met the threshold under Part 13.3 (b).

[38] Rule 13.3 (1) (c):

Whether the Defendant has a real prospect of successfully defending the Claim.

The Applicant/1st Defendant has presented the Defences of **Fair Comment on a matter of Public Interest** and **Qualified Privilege** in relation to the Claimant's claim of Defamation.

[39] The Particulars of his Defence of **Fair Comment** as appears in his Notice of Application to set aside the Judgment in Default of filing a Defence are:

(a.) The Claimant is an Attorney at Law practicing in the Federation of Saint Kitts and Nevis. He is also the Minister of Tourism, Health, Gender Social Affairs, Social Development, Community Development and Culture in the Nevis Island Administration. The Claimant is also the Leader of the opposition within the Federal Parliament.

(b.) The Applicant is a Politician and at all material times the Nevis Reformation Party's candidate for the St. John's Constituency in Nevis. The Claimant is the Elected Representative for the said Constituency. Part of the Applicant's responsibility as a Politician and member of the NRP is to ensure checks and balances exist in the governance of the Federation and on members who hold Public Office. The issues discussed on the 2nd Defendant's programme are issues on matters of Public Importance.

(c.) The debate on whether or not a current Member of Government is engaged in conduct or is affiliated with conduct (whether in the past or in the present) which can bring the Nevis Island Administration or the Federation into disrepute is a matter of grave public importance.

(d.) The Claimant was a Director at the inception of the company Fidelity Insurance Co Ltd. There was an indictment filed on or about 16th May 2013 against the company alleging that the said company was set up to defraud Insurance policy holders, and that the company had engaged in fraud.

(e.) In the premises, the words complained of were Fair Comment in expressing opinions on a matter of public importance.

THE LAW

FAIR COMMENT

[40] Paragraph 135 of the **Halsbury Laws of England Vol. 28** states;

"The Defence of Fair Comment is in the nature of a general right and enables any member of the Public to express defamatory opinions on matters of Public Interest See: **Campbell vs. Spottiswoode [1863] 3 B & S 769**. Such opinions must be based on true facts or facts stated on a privileged occasion and the Defence only applies to Statements which are recognizable by the reader or listener as expressions of opinion rather than Statements of Fact. See: **Hunt vs. Star Newspaper Co. Ltd [1908].** Fair Comment may be pleaded in the alternative to Justification. The Defence is defeated on proof

by the Plaintiff that the Defendant made the defamatory comment maliciously. In the case emanating from the Court of Appeal of Hong Kong **Albert Cheng vs. Lam Yuk Wah and Tse Wai Chun Paul [2001] EMLR 777** Lord Nicholls of Birkenhead opined that, "The Defence of Fair Comment is intended to protect and promote comments, genuinely held on matters of public interest and envisages that everyone is at liberty to conduct social and political campaigns by expressing his own views."

[41] **The requirements of the Defence** are

1. The relevant statement must be recognizable as comment.

2. On a matter of Public Interest.

3. Based on a fact or facts that are truly stated or stated on a privileged occasion.

4. A comment on such fact or facts within the wide limits which the Law allows.

[42] **The Basis of the Defence:** It is a defence to an action of Libel or Slander that the words complained of are Fair Comment on a matter of Public Interest. The right of Fair Comment is one of the fundamental rights of Free speech and writing... and it is of vital importance to the rule of Law on which we depend for our personal freedom. The right is a "bulwark of free speech". These are matters on which the Public has a legitimate interest or with which it is legitimately concerned, and on such matters it is desirable that all should be able to comment freely even harshly so long as they do so **honestly and**

without Malice (See [Gatley on Libel and Slander Chapter 12 Para 12:1 and 12:4])

[43] The Defendant has also mounted the Defence of **Qualified Privilege** and the particulars of Qualified privilege as stated in his Notice of Application to set aside the Judgment are as follows;

(a.) The Applicant indicated in his speech that he was reading from an Indictment issued in Florida, USA.

(b.) Immediately after stating the words complained of by the Claimant, the Applicant was asked by the 2nd Defendant to end his call, to give the Claimant an opportunity on the said programme to give his side of the story. The Applicant ended his call in order to allow the Claimant to respond to his comments.

(c.) The 2nd Defendant asked the Claimant directly about the Indictment and whether he was involved in any of the allegations made against the company. The Claimant was able to verify on the said programme what his position was on the matter.

(d.) The issue of alleged fraud by a member of the Government is a serious issue and was at the material time, an important topic of discussion in the Federation.

(e.) The words complained of was not done for any gains but was a debate on a matter of great public importance at the material time.

THE LAW

[44] The protection of Qualified Privilege at Common Law does not depend on the extent to which the maker of the Statement has made proper Investigations once the occasion is held to be a privileged one, the issue is whether the Defendant acted honestly (i.e.) without Malice, not whether he behaved reasonably or took care.

See: Reynolds vs. Times Newspaper [2001] 2 AC 127 HL.

Reasons for the Defence of Qualified Privilege

[45] Statements published on an occasion of qualified privilege are protected for the common convenience and welfare of society. **[Gatley on Libel & Slander Para 14.4]** as adumbrated by Parke B in **Toogood vs. Spyring [1834] 1 CM & R 181** and reiterated in **Watts vs. Times Newspaper [1997] 1QB 650 CA.**

"It was in the public interest that the rules of Law relating to privileged occasions and privileged communications were introduced, because it is in the public interest that persons should be allowed to speak freely on occasions when it is their duty to speak, or on occasions when it is necessary to speak in the protection of some common interest.

In such cases, no matter how harsh, hasty, untrue or libellous the publication would be but for the circumstances, the law declares it privileged, because the amount of public inconvenience from the restriction of freedom of speech or

writing would far out-balance that arising from the Infliction of a private injury." **[Huntley vs. Ward] (1859) 6CB 514**

"It may be unfortunate that a person against whom a charge that is not true is made should have no redress, but it would be contrary to public policy and the general interest of business and society that persons should be hampered in the discharge of their duty or the exercise of their rights by constant fear of actions for Slander."

See: **Dunnet vs. Nelson (1926) S.C 769 per Lord Sands**

"The principle on which these cases are founded is a universal one, that the public convenience is to be preferred to private interests, and that communications which the interests of society require to be unfettered, **may freely be made by persons acting honestly without malice notwithstanding that they involve relevant comments condemnatory of Individuals (My emphasis)** See: **Adam vs. Ward [1917] A.C 309**

[46] On the other hand in the case of **Seaga vs. Harper [2008] UKPC 9** the Learned Law Lords stated that "the defence of Qualified Privilege was not confined to the Press and Broadcasting Media, but extended to publications made to any person who published material of public interest in any medium, so long as the conditions applicable to responsible Journalism were satisfied, that the standard of conduct which those conditions required of the Publisher of the material was to be applied in a practical manner, having regard to practical realities and to the whole context."

The Learned Law Lords also held that the Defendant's publication in the said case was not covered by the traditional rules of qualified privilege because **the element of reciprocity of duty and interest had been lacking when the Defendant had knowingly made it to the Public at large via the attendant media;** that if qualified privilege were to be claimed by the Defendant, it could therefore only be under the extended principles of responsible journalism **and that since the evidence was that the Defendant had failed to take sufficient care to check the reliability of the Information which he had disseminated, the Defence of Qualified privilege failed.** (**My emphasis)**

[47] "The essential question in each case is whether in all the circumstances, the communication to the particular recipients should be protected in the public interest in the absence of Malice. The circumstances include the seriousness of the charge, the extent of public concern as to the subject matter, the source, the steps taken to verify, the status of the Information, the urgency, whether comment was sought from the Plaintiff and given, whether the Newspaper adopted the allegations as true, and the circumstances of the publication."

See: Bonnick vs. Morris UKPC [2002] 31.

"The freedom to impart and receive information on political matters is essential to the proper functioning of a Democracy **See: McCartan Turkington Breen vs. Times Newspapers [2001] 2 AC 277.** ,

these authorities are cited to illustrate that the Issue of Malice is a triable issue to be determined by the Court on a Trial of this matter.

[48] Learned Counsel for the Applicant/1st Defendant has asked the Court to accept that the Applicant/1st Defendant has a very good prospect of successfully defending the Claim and has a real as opposed to a fanciful defence to mount.

[49] The Applicant/1st Defendant in his Particulars of **Fair Comment and Qualified Privilege** states that;

(a.) He is a politician for the Nevis Reformation Party (NRP) for the St. John's constituency in Nevis while the Claimant is the Elected Representative of the said Constituency. Part of his responsibility as a Politician and a member of the NRP is to ensure checks and balances exist in the governance of the Federation and on members who hold public office.

(b.) That the Clamant was a Director of a company Fidelity Insurance Co. Ltd. and that there was an indictment filed against the company alleging that the company was set up to defraud Insurance Policy holders and that the company had engaged in fraud.

(c.) That the issue of alleged Fraud by a Member of Government is a serious issue and a matter of great public importance.

[50] The Court is of the further opinion that the merits of the proposed defence are very often of decisive importance on an Application to set aside a Default Judgment, and the question as to whether or not the Defendant has a real prospect of successfully defending the Claim has to be considered in the context of **Alpine Bulk Transport Co. Inc. vs. Saudi Eagle Shipping Co Inc [1986] 2 Lloyds Rep 221.**

"That case reflects the standard for establishing a real Prospect of successfully defending the Claim. The Defence must be better than arguable or fanciful. The real question is whether there is a "prima facie" defence, a serious defence or whether the Defence has merits to which the Court should pay Heed."

[51] The Claimant on the other hand has stated in Paragraphs 37 and 38 of the written submissions that the Applicant/1st Defendant expressed the defamatory words with Malice and intended to injure the Claimant's reputation by falsely and maliciously associated the Claimant with illegal and fraudulent activities.

Further that the Applicant/1st Defendant has not pleaded with sufficiency the Fair Comment and Qualified Privilege statements he relies on to ground his defence.

[52] Counsel for the 1st Defendant asserts that the Defendant has a real prospect of successfully defending the claim as his Defence discloses the Defence of Fair Comment and Qualified Privilege which the Court should hear and determine.

The Court agrees with this assertion of Counsel for the Applicant/1st Defendant and considers that the Defence "has merits to which the Court should pay heed." The Defence cannot be described in my view as hopeless, fanciful or unwinnable. It is wholly appropriate that there ought to be a determination of this matter by a Trial of the Merits of the Claim.

[53] Learned Counsel for the Claimant has also argued in her written submissions that the Draft Defence has not with sufficient precision pleaded the comments relied on as constituting a Defence of Fair Comment so the Claimant knows the case he has to meet, and refers to **Bullen and Leake Precedents of pleadings No. 11 para 29-29** and CPR 2000 Rule 10.5. That rule stipulates that a Defendant must set out his case fully and the 1st Defendant has failed to do so in his proposed Draft Defence.

[54] The Court however is of the view that Rule 10.7 (1) (2) (3) of CPR 2000 is instructive and relevant to this Issue and allows the Court to give permission to the Defendant to remedy any deficiencies in his Defence at a Case Management Conference.

[55] Also in the case of **Spiller vs. Joseph et al [2010] UK SC53** Phillips J echoed the words of Lord Oaksey in **Hunt vs. Star Newspaper Co. Ltd**. and stated "The Forms in which a comment on a matter of public importance may be framed are almost infinitely various and in my opinion it is **unnecessary** that all the facts on which the comment is based should be stated in the Libel in order to admit the Defence of Fair Comment."

CONCLUSION

[56] Having examined the proposed Defence and upon considering the supporting Affidavits and Authorities, I am of the respectful opinion that the 1st

Defendant has cleared the mandatory hurdles under Rule 13.3 (1) to permit me to exercise my Judgment.

1. He has applied to the Court as reasonably practicable after finding out that Judgment had been entered.

2. He has given a good explanation for failure to file a Defence.

3. He has a real as opposed to a fanciful prospect of successfully defending the claim or

In any event the Court may set aside the Judgment entered under Part 12 if the Defendant satisfies the Court that there are exceptional circumstances.

[57] Learned Counsel for the Applicant/1st Defendant contends that the exceptional circumstances that the Court should consider would be the prejudice that the 1st Defendant would suffer if the Default Judgement should be allowed to stand, and the quantum of Damages that may be awarded to the Claimant.

[58] Learned Counsel for the Claimant submits that there is nothing exceptional about a Claim for Defamation where defamatory statements are made on a Radio Programme, and a Litigant is conducting the Claim against him in his personal capacity. Counsel contends that the 1st Defendant has had access to legal advice from Queen's Counsel, but did not comply with the Rules of the Court and therefore Judgement was entered against him.

[59] While the Court does not consider the Issue referred to under CPR Rule 13.3 (2) to be couched in the simplistic terms that Counsel for the Claimant has stated. I am nevertheless of the view that the Court would consider the

conditions to be satisfied for Judgement in Default to be set aside under Rule 13.3 (1) as more relevant to this matter.

[60] In the circumstances, after reviewing all the Evidence and authorities and under the inherent Jurisdiction of the Court as provided for in Rule 26.9 (1) (3), and also in exercising the Court's discretion to ensure that the overriding objective of the CPR is met in dealing with cases, I will set aside the Default Judgement entered against the 1st Defendant on the 12th March 2014.

ORDER OF COURT

[61] I hereby make the following Orders:

1. The Application by the 1st Defendant to set aside the Default Judgment entered on the 12th March 2014 is allowed
2. The Defendant is granted leave to file a Defence within seven days of the date hereof
3. The matter will proceed to a Case Management Conference on a date to be fixed by the Registrar
4. The 1st Defendant's Counsel is required to take immediate steps to remedy the defects in the pleadings in relation to the Draft Defence.
5. That there will be no Order as to Costs for this Application.

[62] Both Learned Counsel for the Parties have provided me with very helpful submissions and authorities for which I am most grateful.

Lorraine Williams
High Court Judge (Ag.)