IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2015/0095

BETWEEN:

AMANDA SMITH

Claimant

and

GRENADA BROADCASTING NETWORK LIMITED

Defendant

Appearances:

Ms. Kindra Mathurine Stewart for the Claimant
Ms. Lisa Taylor for the Defendant

2015: May 11

REASONS FOR DECISION

[1] **AZIZ, J.:** This is an application to set aside an order, flowing from the claimant Amanda Smith, who by way of ex-parte application dated and filed on the 10th March 2015, for an interim injunction pursuant to Rule 17.1(1)(a) of the Civil Procedure Rules (CPR) 2000 as amended, sought the following:

1. A **Norwich Pharmacal** Order:

   a. For the disclosure and production of the tape or other electronic recording of the evening news aired on the 29th January 2015, in which a report of the dismissal of the claimant as General Manager of

the Spicemas Corporation was featured, together with an audio or video clip of statements made by Jocelyn Sylvester-Gairy in relation to the said dismissal;

b. All audio or video clips played or aired by the defendant during the period Tuesday 26th January 2015, to Friday 30th January 2015, on the evening edition of the defendant's 7:00 p.m. newscast, concerning the said dismissal of the claimant as the General Manager of the Spicemas Corporation.

2. Such further order or other relief as the court shall deem to be fit or appropriate in all the circumstances.
3. Legal Costs.

[2] The application was supported by a claim form and a statement of claim, both of which were dated and filed on the 10th March 2015.

Background Facts

The Ex-parte Application

[3] The ex-parte application set out the facts on which the claimant relied for their application. The claimant contended that she was dismissed as the General Manager of the Spicemas Corporation on the 26th January 2015, by way of a notice signed by the newly elected Chairperson of the Grenada Broadcasting Network Limited (hereinafter referred to as "GBN Ltd"), Jocelyn Sylvester-Gairy.

[4] The claimant further contended that as far as her dismissal was concerned there were adverse statements uttered by Jocelyn Sylvester-Gairy that were likely to be libelous in an audio clip published by GBN Ltd. on the 29th January 2015, during GBN Ltd.'s evening broadcast which aired at 7:00 p.m. The comments about the dismissal by Jocelyn Sylvester-Gairy were said to be for "more than one minute".

[5] It was also set out in the grounds for the application that commencing on Tuesday 26th January 2015 to Friday 30th January 2015, during GBN Ltd.'s evening news, they aired stories which related to the claimant's dismissal, which were also likely to be libelous.

[6] The claimant alleged that the comments broadcast by GBN Ltd. surrounded her appointment to the post in the first instance and also pointed to her academic skills and qualifications. The claimant set out that it was absolutely necessary that she knew of the exact words uttered by Jocelyn Sylvester-Gairy through GBN Ltd., in order that she, the claimant, could commence a claim for the tort of defamation.

[7] The claimant set out that she had tried all means available to her to have the tape delivered up to her with the comments made by Jocelyn Sylvester-Gairy on air on the 29th January 2015.

[8] The claimant also set out that the defendant knew and was "mixed up" in the facilitation of the wrongdoing (as it broadcast the statements/comments). The defendant, through its employee, therefore requested that the claimant sign an undertaking not to sue the defendant.

[9] The claimant set out that the defendant was also certainly in possession of the tape and any other electronic recording of the evening news on the 29th January 2015. The claimant alleged that a wrong had been committed against her and that "c*ountless persons in Grenada heard and watched the news which broadcast the defamatory statements/comments*" and that such comments were libelous.

[10] There was a statement of claim dated the 10th March 2015. That statement of claim was appended with a certificate of truth signed and dated by the claimant on the 10th March. The documents were filed with the High Court Registry on the same day.

[11] For these purposes I do not intend to repeat what was pleaded in the statement of claim as they are repeated in the affidavit of the claimant, Amanda Smith, which was sworn to on the 9th March 2015, and filed on the 10th March 2015.

The Affidavit of Amanda Smith

[12] As are customary with all pleadings, those deposing to matters in court related documents do set out that the contents of their affidavits, or other pleadings, are within their own knowledge, and as far as the contents are not within their own knowledge, then the contents are true to the best of their knowledge, information and belief.

[13] The affidavit set out the claimant's qualifications, and also a chronology of events that took place. The claimant set out that she worked between 1st March 2014 to 26th January 2015 for the Spicemas Corporation as the General Manager.

[14] The claimant received her termination notice[1] on the 26th January 2015, from the General Manager of GBN Ltd, Jocelyn Sylvester-Gairy, and it was also signed by Mrs. Sylvester-Gairy as Chairman.

[15] At the date of filing of the affidavit the claimant had not spoken to anyone from the defendant GBN Ltd. about the termination.

[16] During the course of Friday 30th January 2015, from approximately 9:00 a.m. the claimant was informed by several persons including close friends and family, and other persons who had formed close working relationships with GBN Ltd. that on the evening news there were comments made for more than a minute about the claimant's dismissal. The claimant was also informed that the comments were derogatory in relation to the claimant's appointment, qualifications and skills.

[1] Letter marked "AS1"

[17] The claimant was also informed by different persons who (it's alleged) would have seen and heard the evening news from Thursday 26th January 2015 to Friday 30th January 2015 that "almost" every evening something was aired about the dismissal of the claimant.

[18] The claimant in her affidavit[2] then deposed as follows:

1. She attempted to call the "defendant's office" on Friday 30th January 2015 and was informed to call back, which she did on Monday 2nd February 2015. She spoke to Janelle McDonald, who was an employee of GBN Ltd. and requested the tape aired on the 29th January 2015. The claimant was told that she could get the tape but that there was a fee. The claimant indicated that she would pay a fee and was then advised to call back.
2. At 11:00 a.m. on the 30th January 2015, the claimant called back the office and again spoke to Janelle McDonald, and Ms. McDonald indicated that she was waiting on someone to "organize the clip" and that it was not done yet, as all such persons were out on assignment.
3. The claimant visited GBN Ltd. on the 2nd February 2015 with a friend, Roger Buckmire. There was a request for the tape. The claimant deposes that someone from the newsroom saw her and indicated that a clip was ready but that they were waiting on Ms. McDonald to give authorization. The receptionist indicated that Janelle McDonald was not in the office (the claimant deposed to seeing Janelle McDonald walking into the office with lunch). The claimant was advised to come back after an hour, so she sat in her car with her friend, Roger Buckmire.
4. The claimant returned to the office after an hour had passed and was then told that the request for the clip ought to be put in writing. This was done immediately in handwriting. The claimant was then later informed that she could not get the clip.

[2] Affidavit of Amanda Smith filed on 10.03.15, paras 10-25

5. The claimant instructed Solicitors to act on her behalf and a letter was sent to the defendant on the 4th February 2015. This was a formal request to the General Manager for the entire recording of the evening news on the 29th January 2015.
6. There was a reply via email on the 6th February 2015 (the claimant's affidavit referred to an email dated 10th February 2015, which has not been seen) between attorneys for the parties. This email[3] had an undertaking[4] attached to it, requesting that the tape would be delivered up "on condition that your client signs an undertaking not to sue the GBN in relation to the same".
7. The claimant deposed to not signing the undertaking, and therefore neither the claimant nor her Solicitors have received the clip.
8. The claimant deposed to being advised of the requirements for a claim in the tort of defamation against Jocelyn Sylvester-Gairy and GBN Ltd., and further deposed that it was "therefore absolutely necessary" that a copy of the recording be given to her, as without it she would not be in a position to commence proceedings against the defendant or Jocelyn Sylvester-Gairy.
9. In the claimant's affidavit she deposed that the reason that no notice was given to the defendant was that she "was concerned that if notice was given to the defendant, the defendant may analyse the tape and destroy or alter same, if the material thereon put it[5] in jeopardy of a defamation action".

Ex-Parte Hearing

[19] The application was considered (ex-parte), and upon reading the affidavit of the claimant/applicant as set out above, sworn to on the 9th March 2015 and filed the following day on the 10th March 2015.

[3] Marked as "AS3"
[4] Entitled as "UNDERTAKING NOT TO SUE.docx. 24K

[5] Referenced to the Defendant and Joceyln Sylvester-Gairy

[20] The Judge, based on the information before him, made the interim order requested. The order was as follows:

> "**ORDER**
>
> **IN CHAMBERS NO. 3**
>
> **BEFORE: THE HONOURABLE JUSTICE THOMAS ASTAPHAN, Q.C (Ag.)**
>
> **DATED: THE 11TH DAY OF MARCH, 2015**
>
> **ENTERED: THE 11TH DAY OF MARCH, 2015**
>
> **UPON:** hearing the application (ex-parte) dated the 10th day of March 2015 and filed the 10th day of March 2015 on behalf of the said Applicant.
>
> **AND UPON READING** the Affidavit of the Applicant sworn to on the 9th day of March 2015 and filed the 10th day of March 2015 in support of the said application.
>
> **AND** the application having been considered without a hearing.
>
> **IT IS HEREBY ORDERED** as follows:
>
> 1. The defendant, the above-named Grenada Broadcasting Network Limited, is hereby ordered to disclose and/or to produce to the claimant, the above-named Amanda Smith, forthwith, a copy of the audio tape or other electronic recording of the defendant's evening news aired on Thursday the 29th day of January 2015, which commenced at 7:00 p.m., in which a report of the dismissal of the claimant as General Manager of the Spicemas Corporation was featured, together with an audio or video clip of statements made by the said Jocelyn Sylvester-Gairy, in relation to the said dismissal

along with all audio or video clips played or aired by the defendant during the period Tuesday 26th January 2015 to Friday 30th January 2015, on the evening edition of the defendant's newscast, concerning the said dismissal of the claimant as General Manager of the said Spicemas Corporation;

2. The claimant shall meet the reasonable costs in respect of the defendant's compliance of this order.
3. The matter is fixed for further hearing on 16th April 2015 at 9:00 a.m.

By Order,

Lisa Telesford, Registrar
(Signed)

[21] On March 12 2005, a further application without notice was filed on behalf of the claimant/applicant. The application was for the inclusion of a penal clause/notice.

[22] This application was supported by an affidavit of Kennisha Bain which set out in terms, the order initially made for the tape to be disclosed but erroneously left out the penal notice. It further stated that the claimant is desirous of having the said penal clause inserted to assist in the enforcement of the said order.

[23] On the 12th March 2015, the Judge having considered the application supported by the affidavit made the order in terms. The penal notice was added to the original order, indicating that if the terms of the order were not complied with then GBN Ltd. could face proceedings for contempt of court and be liable to imprisonment.

The Hearing - 16th April 2015

[24] At the hearing of the application in Chambers, all parties attended.

[25] Ms. Taylor, for the defendant, indicated that there were two applications. The first being the inter-parte hearing and secondly, the committal.

[26] I turn to the committal now as it can be dealt with quickly. The issues in relation to the committal, being a penalty for non-compliance with the initial order made and later amended order, were not dealt with at this hearing.

[27] Ms. Taylor indicated that the hearing of the first application may determine how we proceed with the second application being the committal. Ms. Mathurine Stewart submitted that the committal was a separate matter irrespective of how the court found on the first application.

[28] The issue of committal was adjourned to be dealt with at a later date.

The Defendant submissions

[29] Ms. Taylor, on behalf of the defendant, submitted that the **Norwich Pharmacal** Order was made by the Judge without a hearing and having full consideration of all parties, and therefore by granting the order, it amounted to a final order.

[30] Ms. Taylor submitted that there was good reason why the order ought not to have been made in the first place, and felt the need to make a strong opposition. She contended and made a concession that the order can be properly sought where a party was seeking to determine whether a wrong had been done.

[31] Ms. Taylor submitted and referred the court to paragraph 18 of the claimant's affidavit:

> *"The claimant further avers that a wrong was committed against her, since countless persons in Grenada heard and watched the news which*

broadcasted the defamatory statements/comments or reference were made and reported to the claimant as being heard and libelous."

[32] Counsel for the defendant submitted that the claimant was taking her belief that a wrong had been committed, from others. This is what Counsel says founded the basis of the application and therefore that is what made it necessary for a copy of the audio recording to be provided.

[33] Counsel, Ms. Taylor, then sought to set out the principles to be considered when considering such an order. Two of the principles referred to were that (1) this was a discretionary remedy, and (2) the court ought to be satisfied that the order is a necessary and proportionate response. Other considerations were the strength of the cause of action and finally, whether the material could be obtained from another source.

[34] Ms. Taylor pointed to a number of factors arising out of the claimant's affidavit. Counsel made reference to paragraph 7 of claimant's affidavit, referring to "different persons" who told the claimant about the aired clip. There is also a reference to close friends and persons whom the claimant would have formed a working relationship with at GBN Ltd.[6]

[35] The question was asked, in the court's opinion rhetorically, whether this could be treated as authentic. In addition, Counsel then referred the court to the fact that the claimant was relying on the advice she was or may have been provided with by her attorneys. One such phrase taken out of the affidavit of the claimant was "words were likely to be libelous".

[36] Ms. Taylor forcefully submitted that the allegations lacked sufficiency. Counsel also conceded shortly thereafter that the law does allow information sought to be

[6] paragraph 5 of claimant affidavit

disclosed, but she argues there was insufficiency of information for the order to be made as it was.

[37] Ms. Taylor submits that the court should consider whether the information could be obtained from another source, and whether there was any other option.

[38] The court was helpfully taken through the course of events and the affidavit of Odette Campbell sworn to and filed on the 8th April 2015. It is clear and the court accepts that there was communication between Counsel for the parties in relation to how this clip, tape or electronic recording was to be delivered up in compliance with the amended order. There are letters and emails already referred to in this judgment.

[39] The court accepts as a finding of fact that the defendant, through Ms. Campbell, sought legal advice on the order when it was served. It was accepted by Ms. Taylor that Ms. Odette Campbell did try to contact the office, but (she) was not informed until late in the day.

[40] It is also clear from the submissions that Odette Campbell gave instructions for the tapes to be delivered up. Despite the calls between the parties over the delivery of the tape, there were also letters sent. One of the important documents sent to the claimant was an undertaking.

[41] Ms. Taylor submitted that the purpose of the undertaking was not in context of the defamation but in her words was "out of mere convenience so that the matter could be settled." The submission advanced on that point was that it was thought to be an issue between the claimant and Jocelyn Sylvester-Gairy and not GBN Ltd.

[42] Ms. Taylor submitted that there ought to have been full and frank disclosure and that in this case that did not happen as there was nothing to suggest that a wrong had occurred.

[43] Ms. Taylor then submitted that there was nothing said by the claimant about trying to get the information from the internet[7]. It was also submitted that the claimant promotes Spicemas, and therefore would have had familiarity with GBN Ltd. Counsel submitted that there would have been several opportunities to get the clips from the newscast as they are replayed at 10:00 a.m., 7:00 p.m., and 10:00 p.m.; in addition to the GBN Ltd. website. As far as the website is concerned, it was stated that key words could have been searched for and this would have accessed the relevant feature or story.

[44] The court was reminded that GBN Ltd. is a privately owned[8] entity and that once the matter was in the lawyer's hands there was no reason to apply for the order. Rather curiously, it was submitted that there was nothing in law that required the defendant to treat with the claimant's request.

[45] Ms. Taylor also submitted strongly, in fact there was a robust denial of any tampering of the tapes or electronic material.

[46] In summary, Ms. Taylor submits that:

1. There was a duty of full and frank disclosure;
2. The application was made on paper alone; meaning without a hearing.
3. Grant of such order must be necessary and proportionate;
4. The information could have been got from elsewhere without the application;
5. Order ought not to have been granted, especially where it was granted on paper only;
6. The return date was a month later and too long.

[7] Paragraph 9 of Odette Campbell affidavit
[8] Majority owned by "One Caribbean Media Ltd" – Para 12 of Affidavit of Odette Campbell

The Claimant's response

[47] Counsel for the claimant, Ms. Mathurine Stewart, started her submissions by questioning the assertion that there was nothing in law for the defendant to treat with the claimant's request. This, despite an order of the court being made on application requiring the defendant to do an act, which, if not complied with, would result in a penal sanction.

[48] The court was helpfully referred to the decision of **A, B, C, D v E**[9]. Ms. Mathurine Stewart set out that for the order to be granted, the applicant would have to show:

1. There was an apparent wrong;
2. The respondent has become mixed up;
3. The information is required to establish a wrong has been committed or what the wrong is or who the wrongdoer is;
4. That a **Norwich Pharmacal** Order is granted at the discretion of the court.

[49] Counsel states that the affidavit of Amanda Smith, the claimant, referred to above, complies with all of the criteria. The court is told that there must be a need for action. The defendant must be so mixed up in the wrongdoing, and to be able to provide for the wrongdoer to be sued.

[50] Ms. Mathurine Stewart submits that the claimant did not see the broadcast and was informed of the broadcast. The claimant set out in her affidavit that she waited at the premises of GBN Ltd. for hours and was eventually told to reduce the request in writing, which was done, and having tried all avenues to get the tape, it was felt that without the court's intervention GBN Ltd. would not have provided a copy thereof.

[51] As far as disclosure was concerned, Counsel contended that full and frank disclosure was made and reference was made to the letters written for the release

[9] No 001 of 2011, Para 31, page 18

of the tape. Counsel further submits that the information provided in the affidavit was sufficient for the order to be made in the circumstances and considering the unpleasantness that took place at the premises of GBN Ltd. It is also clear that the defendant's agents/servants do not accept the accusations of unpleasantness. Counsel for the defendant submitted that the unpleasantness came from the claimant and not by Cynthia Thomas, who was at the time the receptionist at GBN Ltd.[10]

[52] As far as the undertaking was concerned, Counsel for the claimant submitted that this must be taken in context of the surrounding circumstances, as far as the efforts to retrieve the tape was concerned.

[53] Ms. Mathurine Stewart submitted for an action in defamation to ensue, one must know what the exact words were which were used. Counsel submitted that it wasn't only those who made the statements but those who published the statements, and therefore by extension GBN Ltd. was "mixed up" in the reporting.

[54] Counsel says that the clip is not on the website, but this may be Counsel giving evidence so the court will take this at face value in the same way Counsel for the defendant asserts that the material is still on the website. The court will not be swayed by this particular submission on behalf of either party at this stage.

[55] Ms. Mathurine Stewart argues that the material was not reported elsewhere, that they wrote a letter requesting the material. Counsel, Ms. Mathurine Stewart, submits that they employed every available avenue and the claimant still did not get the tape.

[56] Finally, Ms. Mathurine Stewart submitted that the Judge was right to grant the order in all of the circumstances.

[10] Para 11 of Odette Campbell Affidavit.

[57] In reply, Ms. Taylor submitted that she conceded that a note was given to the receptionist, and also that the claimant had not met with Ms. McDonald but that Ms. Thomas and Ms. McDonald conferred on the 2nd February 2015 when the claimant attended and was asked for the request for the tape/clip to be put in writing.

General Principles

Defamation

[58] The claimant is considering an action of defamation.

[59] As far as slander is concerned, the rule is that "Where a defamatory sense is communicated by spoken words or in some other transitory form, whether audible or visible, such as significant sounds, looks, signs or gestures, there is publication of slander."

[60] The rules further state that the claimant must, in his statement of case, be able to set out with reasonable certainty the "alleged defamatory words" their alleged meaning and if necessary, factors relied upon as identifying the claimant as the subject of the allegations.

The Common Law position on Slander

[61] The Common Law position, as far as Slander is concerned, is that it was necessary that the words, in order to be actionable per se, should be spoken of the plaintiff in the way of his office, profession, calling, trade or business[11] (subject to the exceptions in the case of insolvency imputed to a trader or misconduct imputed to a clergyman in certain cases). There had to be some reference in the words themselves or something in the circumstances in which they were uttered which connected the slander with the plaintiff's calling.

[11] Clerk & Lindsell on Torts, Lumby v Allday [1831] 1 Cr. & J, 301, Hopwood v Muirson [1945] K.B. 313, C.A

Norwich Pharmacal Order

[62] Ms. Mathurine Stewart referred the court to the **Norwich Pharmacal** case[12]. This set out the parameters for the granting of what is known as the **Norwich Pharmacal** Order (hereinafter referred to as "the order"). In the case referred to, the applicants A, B, C & D applied to the court for the order indicating that E had information which should form the basis of the order. What the applicants were seeking was information from the Bank E, about an account held by a party F. The court was supplied with several wrongdoings by F.

[63] The parties in that case indicated that the information was required which would assist them in pressing their defence and counterclaim in another matter. They argued that if the information was not disclosed that they would not be able to discover the extent of the wrongdoing by F.

[64] The applicant E had stated that the net had been cast wide and a lot of information required was not relevant. It was a fishing expedition, it was argued. The respondent bank said that the information could have been discovered by other means of discovery and finally, that for E to disclose such material, it would override its duty of confidentiality.

[65] It is clear from the submissions advanced that the case **Norwich Pharmacal Co. v Commissioners of Customs and Excise** [1974] AC 133 is the *locus classicus*. It was held that a person who was innocently mixed up in the wrongdoing of another so that he was more than a "mere witness" could be compelled to disclose the identity of a wrongdoer in order that proceedings can be taken by the victim against the appropriate defendant. This is what emerged in the area of discovery as the **Norwich Pharmacal** jurisdiction.

[12] Referred to in the case of A, B, C & D v E, Claim No. AXAHCV 0063/2010

[66] The Court is also mindful of the cases of **Arab Satellite Communications v Saad Al Faqih**[13] where Underhill, J refused to make an order as he said:

> *"That the order did not give the claimant a general licence to fish for information that would do more than potentially assist them in identifying a claimant or defendant".*

[67] This court reminds itself of the case of **Mercantile Group (Europe) AG v Aiyela**[14] where the English Court of Appeal stated:

> "The jurisdiction to order disclosure against a third party exists when two conditions are satisfied. First, the third party must have become mixed up in the transaction concerning which discovery is required. Secondly, the order for discovery must not offend against the mere witness rule."

[68] Ms. Mathurine Stewart, for the claimant, set out rightly the three conditions which must be satisfied in order for the court to exercise its power to order **Norwich Pharmacal** relief. For the avoidance of doubt they are:

a. There must be an apparent wrong carried out by an ultimate wrongdoer;
b. There must be the need for an order to enable action to be brought against the ultimate wrongdoer; and
c. The person whom the order is sought must (a) be mixed up so as to have facilitated the wrongdoing and (b) be able or likely to provide the information necessary for the ultimate wrongdoer to be sued.

The Conditions

[69] This court finds that based on the affidavits filed and the helpful submissions by both Counsel, that there is an arguable case.

[70] There is on the face of evidence, an "apparent" wrong. Why else would GBN Ltd. seek to have an undertaking signed by the claimant not to sue if the tape was disclosed? There were several requests for the tape orally and in writing and

[13] [2008] EWHC 2568 QB
[14] Court of Appeal, England

Counsel for the claimant also wrote requesting the material. The requests were clear and unequivocal.

[71] The court also finds that the defendant was "mixed up" in the apparent wrongdoing as it was GBN Ltd. that aired the broadcast in which the words which may be defamatory were used. In submissions for the defendant, it was stated that the clips/tapes or recording would have been on the defendant's website or that a search of various relevant terms should have brought up the relevant clips. It was also conceded in oral submissions that the news is limited and that the clip would have been played on several occasions during that week. This is consistent with the claimant having a reasonable belief, based on what she had been told by others who had heard and seen the broadcast, that there may have been defamatory comments made by the defendant.

[72] Why, as Ms. Taylor submitted, would GBN Ltd. want to settle? What did they think would be settled? The court finds that GBN Ltd. must have considered that there was an apparent wrongdoing and to avoid further liability they insisted on the undertaking. It is inescapable but to find that the defendant would have had the information requested by the claimant as set out above.

[73] The court is possessed with an inherent discretion which it can exercise either in favour or against a party wishing to bring proceedings. As far as "the order" is concerned, the jurisdiction of the court is not only discretionary but the court must be fair and equitable. The court also has to ensure that measures are reasonable and proportionate, in the interest of justice.

[74] The main issue in this case was whether the order ought to have been made. The submission by the respondent being that there were other avenues available to the claimant.

[75] It is clear from the claimant's application that the tape or recording is required in order that the contents can be listened to, in order to establish not only who the wrongdoer is but also the nature of the wrongdoing.

[76] This court is of the view that the information requested is necessary so that the claimant is able to properly decide the nature of the alleged wrongdoing. When the court considers the application and the affidavits filed by the claimant, this court can see nothing that would lead the claimant to believe, unreasonably, that there was an apparent wrongdoing committed against her. The mere fact that the claimant relies on a belief that comes from others does not make her belief an unreasonable one per se. Others included those family and friends, and those who were aware of the claimant and without view of her relationship with GBN Ltd.

[77] It bears repeating here that Spicemas is a well known event. There are a lot of people in public who know of this event and who may know of the claimant. If others have heard the aired clip and form a preliminary view that there may be an apparent wrong, and this is communicated to the claimant, is it reasonable that she may think that an apparent wrongdoing has been committed against her? The answer must reasonably and subjectively be yes. This now means that it is the subjective view of the claimant that an alleged wrongdoing has been committed, but the only way to confirm this is to have access to the material. This is not the claimant's reasonable belief.

[78] This brings us back to the requests made by the claimant for the tape. Having reviewed the authorities it would seem that the principle is that "If through no fault of his own, a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing, he may incur no personal liability, but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers ... justice requires that he should co-

operate in fighting the wrong if he unwillingly facilitated the perpetrator and so obtain the evidence they so require."[15]

[79] It is agreed that the material sought must be necessary and proportionate. The court finds that the material is necessary for the pressing of the claim. The question is, was the order necessary and proportionate?

[80] This Court is of the view that the order ought not to be lightly granted, and has already set out the circumstances and some history as to how this matter came to be before the court.

[81] This Court has carefully examined the circumstances of this case in an effort to see whether the order was necessary and proportionate.

[82] Despite the forceful arguments by Ms. Taylor on behalf of the defendant, the court is satisfied that the disclosure sought was necessary and proportionate.

[83] The court is also satisfied that there is a jurisdiction to make the orders, and any order made is in furtherance of justice being done.

[84] This Court finds that this request by the claimant was not a fishing exercise. Of course the claimant needs to know what was said, the apparent wrongdoing, in order to be able to identify the wrongdoers and the nature of the wrongdoing.

[85] The court is not persuaded that there was a lack of sufficiency of evidence. The claimant's employment was terminated on the 26th January 2015; a few days later, there was a program, and various people apparently heard words that may be derogatory to the claimant. The claimant soon thereafter, embarked upon the requests for the material as set out earlier and will not be repeated now.

[15] Lord Reid in Norwich Pharmacal Case

[86] Due to the nature of this case, and considering all the circumstances, this Court finds that the application for the order was an appropriate one which the court exercised its jurisdiction in granting.

[87] This court in no way treated this application as an appeal, being a court of concurrent jurisdiction, but merely sought to clarify why in its view the factors to make the order was present, and expresses the view that the order was rightly made. Justice must be done between the parties. The court also wishes to thank Learned Counsel for their assistance in this matter.

[88] Accordingly, the application to set aside the order is dismissed.

[89] Costs of the application to the claimant.

Shiraz Aziz
High Court Judge