THE EASTERN CARIBBEAN SURPEME COURT

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2016/0146

JOSEPHINE HUGGINS

Claimant

V.

SKN CHOICE LIMITED
DWIGHT COZIER

Defendants

Appearances: Mr. Anthony Gonsalves QC with Ms. Jenise Carty for the Claimant
Ms. Angela Cozier with Ms. Emily Prentice for the Defendants

2018: March 6th;
April 12th

JUDGMENT

[1] **MOISE, M**.: On 15th January, 2018 the claimant applied to strike out certain parts of the defense of the 2nd defendant. Further, on 24th January, 2018 the claimant also applied for an unless order in relation to the defense filed by the 1st defendant, requesting that the 1st defendant be compelled to respond to certain paragraphs of the Statement of Claim and in the event of default that the 1st defendant's defense should be struck out and judgment entered for the claimant. Both applications were heard on 6th March, 2018. Firstly it is important to briefly outline certain elements of the facts in this case.

[2] The claimant commenced proceedings on 9th May, 2016 claiming damages for libel against the 1st and 2nd defendants and an injunction restraining the defendants, whether by themselves or their agents from further publication of the words complained of. From the facts presented so far it would be correct to state that the 1st defendant is the owner/operator of a local newspaper operating in Saint Christopher and Nevis by the name SKN Leeward Times Newspaper. The 2nd defendant is an employee of the 1st defendant and the facts suggest that he is a director within the organization.

[3] The 1st defendant has filed an amended defense on 15th January, 2018 in keeping with the order of Master Agnes Actie made on 16th August, 2017 striking out paragraphs 2 to 9 of the said defense. The claimant however contends that this amended defense still does not comply with the provisions of 10.5 of the CPR. The 2nd defendant filed a defense on 18th December, 2017. The applications currently before the court relate to the content of certain paragraphs of these defenses and the court will consider each application in turn.

Application to Strike out parts of the Defence of the 2nd Defendant

[4] The applicant requests the following orders from the Court:

(a) That the 2nd defendant be compelled to respond to paragraphs 2,4,14 and 16 of the Statement of Claim;
(b) That paragraphs 7 through to 9 of the defense be struck out for the 2nd defendant's failure to comply with CPR10.5(3) and 10.5(4)
(c) That paragraphs 37 through to 44 inclusive of the defense be struck out for the 2nd defendant's failure to comply with CPR69.3;
(d) That pursuant to CPR34.2(1), the 2nd defendant be compelled to disclose the full names and responsibilities of all employees of the 1st defendant at the time of publication of the 7th January – 14th January, 2016 issue of the SKN Leeward Times Newspaper (Edition 911)
(e) Costs

[5] Paragraph 2 of the Statement of Claim states as follows:

> ***"The first- named defendant is a company incorporated under the Companies Ordinance of Nevis with its registered office situated at Ramsbury, Charlestown, Nevis. The First named Defendant was at all material times the publisher and/or printer and/or operator and/or proprietor of the SKN Leeward Times Newspaper … a newspaper which operates from within the island of Nevis and which has a large circulation within the Federation of Saint Christopher and Nevis in which Federation the Claimant resides."***

[6] Paragraph 4 of the Statement of Claim states that ***"the newspaper edition referred to in paragraphs 9 and 10 did not contain therein the christian name and surname and place of abode of the editor thereof as is required by section 12(a) of the Newspaper Act CAP 12.83."***

[7] Paragraphs 14 and 16 of the Statement of Claim state as follows:

> ***"The Claimant, through her attorneys at law, by letter dated March 1st 2016 and addressed to the editor of the newspaper and to the manager and to the Manager and***

Directors of the First-named Defendant complained of the aforesaid publication of the aforesaid defamatory article, and specifically the words set out in paragraph 10 above and demanded, inter alia the publication of a retraction and an apology to be published on the front page of the next edition of the newspaper. The First-named Defendant, through its attorney at law, replied by letter dated 9th March, 2015, stating, inter alia, that the words complained of were not capable of being defamatory of the Claimant. The said letter stated, inter alia that "my client has simply published comments made by the leader of the opposition who stated that there were certain payments and relationships that he is aware of and asking the media to do further investigations on these payments and relationships" The First-Defendant thereby refused to agree to provide and publish the demanded retraction and apology."

…

Further or in the alternative the defendants published the words set out in paragraph 10 above calculating thereby to increase the circulation of the newspaper, and of advertising space therein. The claimant cannot give particulars hereof until after discovery herein. The Claimant also repeats the particulars set out in paragraph 15 above in her claim for exemplary damages."

[8] To these paragraphs the 2nd defendant has simply not provided a reply in his defense. On this basis the claimant requests that the court makes an order compelling the 2nd defendant to respond to the allegations contained in these paragraphs. Rule 10.5 of the CPR outlines the defendant's duty to set out his case. In particular sub rules (3) to (5) state as follows:

(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 nor 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 reasons for doing so; and
(b) if the defendant intends 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

[9] The claimant is therefore correct in submitting that a defendant has a duty to respond to each allegation contained in the statement of claim by either admitting or denying the allegation, or stating that he is not in a position to admit or deny because he does not know whether the allegation is true. If he denies the allegation he must give a reason for doing so and set out his own version if he intends to prove a version of facts which differ from those of the claimant. At paragraphs 8 and 9 of his affidavit in opposition to the application, the 2nd defendant argues that he has in fact complied with Rule 10.5 in that he has responded to every allegation made against him in the statement of claim. He states for example that the 1st defendant is responsible for responding to the allegations made against it. He further contends that the request to compel him to respond to these allegations should not be made in an application to strike out the statement of case and on that basis should be disregarded. I will address the second of these two contentions first.

[10] In his written submissions filed on 6th March, 2018 the 2nd defendant, through his counsel, argues that ***"neither ground (a) nor (d) of the application herein, in relation to compelling the respondent to respond to particular sections of the applicant's statement of case in the form which they have prescribed, and for further information, don't relate to an application to strike out, and the effect of those grounds would not amount to a strike."*** On that basis it is argued that ***"if the applicant wanted to rely on the aforementioned grounds, then a proper application should have been made and set out so as to allow the court to make a merits-based judgment."*** The 2nd defendant relies on Rule 11.7(1) and 11.9 of the CPR as well as the decision of ***Clarvis Joseph et all v. Antigua Power Company Limited***[1] for the submission that this request ought not to be included in an application to strike out certain parts of the 2nd defendant's defense.

[11] In response to this the claimant argues that the content of paragraphs 8 and 9 of the affidavit in opposition filed by the 2nd defendant should also be struck out as they allegedly contain issues of law and not of fact. From the onset, at least in so far as paragraphs 8 and 9 are concerned, I do not agree with the submissions of the claimant. In effect the 2nd defendant is arguing that it is not his duty to respond to the allegations which are expressly made against the 1st defendant. For reasons which will be explained later I disagree with the 2nd defendant's contention but I am not of the view that the court is to exercise its powers to strike out these paragraphs of the affidavit on the grounds outlined by the claimant. The question is whether the 2nd defendant is correct in his assertion and I am not of the view that he is. Further I do not accept the submissions of counsel for the 2nd defendant that the Court is to disregard the request of the claimant simply because this is generally an application to strike out certain paragraphs of the defense. A party is entitled to request orders

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from the Court by way of notice of application. The application can contain a number of requests provided that the applicant has included the grounds on which the request is based in his application. This is not a ground on which the Court should disregard the request made by the claimant to compel the 2nd defendant to respond to certain paragraphs of the statement of claim.

[12] There is, to my mind, an inextricable link between the claim against the 1st and 2nd defendants. To a great extent the decision of Master Agnes Actie delivered on 16th August, 2017 in these same proceedings touched on these issues when she denied an application made by the 2nd defendant to strike out the case against him. There are allegations contained in the statement of claim that the 2nd defendant is a director of this company and is jointly sued for defamation of character. The facts which are within his knowledge are of relevance to the claim and I am of the view that by simply not responding to the allegations contained in the paragraphs outlined by the claimant the defendant is not fulfilling his duty under rule 10.5 of the CPR to respond to each and every allegation made against him. This is especially the case in reference to paragraphs 4, 14 and 16 in which these allegations do not single out any one of the defendants but contain allegations to which the 2nd defendant ought to provide a response in keeping with the provisions of Rule 10.5 of the CPR. He is to either admit, deny or state that the does not know whether the allegations are true. I accept that an order ought to be made to ensure the 2nd defendant's compliance with the rules.

[13] I wish further, after careful consideration, to make one observation in so far as it relates to the defendant's written submissions filed on 6th March, 2018 on this specific issue. After submitting that the request to compel the 2nd defendant to respond to certain allegations should be disregarded, the written submissions make certain assertions at paragraph 15 which I will not repeat in this written judgment. In my view the inclusion of some of these assertions is not appropriate and the parties and counsel must at all times attempt to remain courteous and to maintain the integrity of the process.

[14] The claimant further requests that paragraphs 7 through to 9 of the defense of the 2nd defendant be struck out for failure to comply with Rule 10.5(3) and 10.5(4) of the CPR. These paragraphs state as follows:

> ***7. The 2nd defendant denies paragraph 8 of the statement of claim that he knew of the content of the article referenced in paragraphs 9 and 10 of the statement of claim in his personal capacity and in any case repeats paragraphs 2, 4, 5 and 6 above.***
>
> ***8. The 2nd defendant further denies paragraph 8 of the statement of claim that he had authority over persons in his personal capacity to obtain the removal of the offending article, and specifically the words set out in paragraph 10 of the statement of claim, from the newspaper before its publication …"***

[15] The claimant's contention is that the allegations contained in paragraph 8 of the statement of claim make no reference to the 2nd defendant's knowledge or authority held in his personal capacity and that this in effect is not a response to the allegation made therein. It is further argued that this is at best a bare denial of the allegations. The 2nd defendant on the other hand argues at paragraph 9 of his affidavit dated 15th February, 2018 that ***"the applicant has stated expressly that I am being sued in my personal capacity in paragraph 3 of the affidavit in opposition filed on 28th September, 2017 and sworn by Tishuana Stanley. Therefore, my response can only be made in my personal capacity and therefore it is an abuse of process for the applicant to leave the claim ambiguous and expect me to answer to any implication that can arise from making me a party to the claim."*** The claimant on the other hand states that the claim is not ambiguous as nowhere in the statement of claim are the words "in his personal capacity" used. She further argues that the ***"applicant has set out the manner in which the 2nd defendant has acted or participated in the said publication and his capacity in relation to the company."*** I agree with that submission.

[16] Rule 10.5 mandates that the defendant is to respond to the allegations made against him in the statement of claim. The statement of claim at paragraphs 5 and 6 speaks to the 2nd defendant's capacity as director and sole shareholder of the 1st defendant company. The paragraphs also speak to the 2nd defendant's capacity as an officer and/or manager and/or the editor and/or the directing mind and/or controlling personality behind the operations of the 1st defendant. In so far as paragraph 8 of the statement of claim is concerned it does not speak to the 2nd defendant's knowledge or authority in any particular capacity other than that which has specifically been pleaded. It simply speaks to his knowledge in so far as it relates to the substance of this case. By addressing this issue on the basis of what he did not know in his personal capacity the 2nd defendant is not responding to the allegations made against him in these paragraphs of the statement of claim which is in essence neither an admission nor a denial of the allegation, neither is he contending that he does not know of the content of the said paragraph.

[17] The power to strike out a statement of case or even portions within them is found in Rule 26.3 of the CPR2000. The rule states as follows:

> ***26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –***
>
> ***(a) 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 the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;***

(c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[18] In my view the content of paragraphs 7 to 9 of the 2nd defendant's defense does not comply with the rules in so far as it relates to 10.5 of the CPR. In that regard paragraph 36 of the decision of Master Actie in this case is worth repeating when she states as follows:

"Pleadings are intended to help the Court and the parties. The matters pleaded by the claimant are primary facts to indicate the writer or the person with the authority to publish or to withdraw the publication. As indicated above, the Newspaper company although clothed with separate legal entity distinct and apart from its directors could not have published the document unless the publication was orchestrated by an individual. The claimant is saying no more than that Cozier wrote or caused to be written or had knowledge or had the authority to withdraw the publication of the alleged defamatory document. The rules require the defendants to plead in answer whether the claimant's allegations are true or false and if not true, to provide their version of facts."

[19] To my mind, a similar approach is to be adopted in this instance. In response to the allegations the 2nd defendant does not attempt clearly to plead whether the claimant's allegations are true or false and if not provide a different version of the facts. By simply denying that he knew of the allegations in his personal capacity and that he had no authority as alleged in his personal capacity he is not complying with the requirements of the rules. In the circumstances I agree with the claimant that the paragraphs ought to be struck out on that basis. I would only add that leave be grated for the 2nd defendant to amend his defense and properly respond to the allegations contained in the paragraphs referred to by the applicant in this regard. He is to either admit or deny his knowledge of the content therein and if he denies it then he is to set out his version of facts. He is also entitled to state whether he neither admits nor denies the allegations because he does not know whether they are true.

[20] The claimant also requests an order that paragraphs 37 through to 44 inclusive of the defense be struck out for the 2nd defendant's failure to comply with CPR69.3. The rule states as follows:

69.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that –

(a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and

(b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or

(c) pleads to like effect;

must give particulars stating –

(i) which of the words complained of are alleged to be statements of fact; and
(ii) the facts and matters relied on in support of the allegation that the words are true.

[21] Paragraph 37 of the 2nd defendant's defense states as follows:

> ***"The 2nd defendant says that in so far as the words complained of in paragraph 10 of the statement of claim consists of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, as they are a report of a news source namely the LPCU reporting on what was said by the leader of the opposition during a radio conference."***

[22] At first glance it would seem that this paragraph does not comply with the provisions of Rule 69.3 of the CPR as it does not attempt to establish which of the words complained of are true and which amount to fair comment. However, the 2nd defendant refers the Court to paragraph 12 of his defense where he states that ***"the words complained of at paragraph 9 of the statement of claim are false, because the only words which refer to the claimant therein are in the statement which reads that "it is reported that the cabinet secretary [the claimant] … eventually signed off on the Prime Minister's request." which words are true."*** In the remaining paragraphs, i.e. paragraphs 38 to 44 the 2nd defendant gives what is in my view a clear explanation as to the facts he relies on in his defense of justification and fair comment. He also states that the entire article was merely fair comment on reports which were already in the public domain and that in essence all of the words complained of were published in the public interest with the honest belief that ***"all portions were true."***

[23] I agree with the submissions of the 2nd defendant that the paragraphs ought not to be struck out as in my view the content of these paragraphs are not offensive to rule 69.3. In paragraph 12 and the paragraphs complained of the 2nd defendant has provided sufficient detail as to which words he believes to be true and subject to fair comment. In the circumstances the request to strike out paragraphs 37 to 44 of the 2nd defendant's defense is denied.

[24] The claimant further requests that pursuant to CPR34.2(1), the 2nd defendant be compelled to disclose the full names and responsibilities of all employees of the 1st defendant at the time of

publication of the 7th January – 14th January, 2016 issue of the SKN Leeward Times Newspaper (Edition 911). Rule 34.2 states as follows:

> ***34.2 (1) I f a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.***
>
> ***(2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.***
>
> ***(3) When considering whether to make an order, the court must have regard to –***
> ***(a) the likely benefit which will result if the information is given;***
> ***(b) the likely cost of giving it; and***
> ***(c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.***

[25] Despite the powers of the Court to compel disclosure at this stage in the proceedings, I must bear in mind that this is to be exercised only in circumstances where it is necessary in order to dispose fairly of the claim and to save costs. I must consider the likely benefit which will result if the information is given. This request relates specifically to paragraph 7 of the statement of claim which alleges that the 2nd defendant participated and/or authorized and/or secured the publication described in paragraph 10 therein. The paragraph further alleges that the publication was effected with the participation, knowledge and consent or approval of the 2nd defendant. For his part, the 2nd defendant denies this at paragraph 6 of his defense and states that he is not involved in the day to day "runnings" of the 1st defendant since there are employees assigned to those tasks. The claimant subsequently wrote to the defendants on 4th January, 2018 requesting the full names and responsibilities of all employees of the 1st defendant at the time of the publication of the 7th -14th issue of SKN Leeward Times Newspaper (Edition 911). The 2nd defendant has so far refused to acquiesce to this request. In the circumstances the claimant asserts that the information is necessary to dispose fairly of the claim and to save costs.

[26] I am however not of the view that such a broad request from the claimant is necessary for the purpose of fairly disposing of this case and saving costs. In my view, as has been pointed out by the claimant, it is to sections 12 and 13 of the Newspaper Act[2] which the Court should turn. The sections state as follows:

> ***12. Duties of Editor and liabilities etc. of Newspaper.***
>
> ***Notwithstanding the provisions of any enactment to the contrary,***

[2] CAP18.23 of the laws of Saint Christopher and Nevis.

(a) at the end of every newspaper and of every supplement sheet, pamphlet or piece of printed paper shall be printed the christian name and the surname and the place of abode of the editor thereof;

(b) every provision of this Act which relates to the printer and publisher shall apply to the editor and anything required to be done by or in respect of the printer or publisher shall be done by or in respect of the editor;

(c) the provisions of this Act shall apply to every newspaper whether printed or conducted by a body corporate or by any combination or individual and civil or criminal proceedings may be instituted by any aggrieved party against such body corporate, combination or individual.

13. Discovery.

If any person shall file any bill in any court for the discovery of the name of any person concerned as printer, publisher or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper in order the more effectively bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person it shall not be lawful for the defendant to plead or demur to such bill but such defendant shall be compellable to make the discovery required:

Provided that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant save only in that proceeding for which the discovery is made.

[27] The claimant alleges in her statement of claim that the christian name, surname and place of abode of the editor was not printed at the end of the publication which carried the article complained of. The 1st defendant denies this in the amended defense filed on its behalf. However, whilst this is a requirement under section 12, the section does not prescribe a penalty for the failure to disclose this information. The section goes on to state that any provision of the Act which relates to the printer or publisher shall apply to the editor. In that regard it is section 13 of the Act which is truly instructive. It makes provision for an application to be made for discovery of "***the name of any person concerned as printer, publisher or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper in order to more effectively bring or carry on any suit or action for damages…"*** To my mind, having alleged from the onset that the name of the editor or perhaps the name of the printer or publisher was not contained at the end of the publication complained of, it would have been proper for the claimant to make an application pursuant to section 13 of the Newspaper Act even prior to the filing of the claim. What is requested at this stage is for the court to compel the 2nd defendant to undertake what may very well be the tedious task of supplying the full names and responsibilities of all employees of the 1st defendant whatever the number of this contingent of persons. I do not think that an order of so broad a scope

is necessary in order to fairly dispose of this case and it would certainly not assist in reducing the costs of this process of litigation.

[28] However it is inescapable that the 2nd defendant has denied that he has the authority which the claimant alleges that he has and that there is an allegation that the 1st defendant in particular is in breach of the provisions of section 12 of the Newspaper Act. I accept that there is a need for further disclosure at this stage in order to dispose fairly of this matter and I am also of the view that it is the 1st defendant who is in a better position to supply this information. I am mindful of the fact that the application was made only against the 2nd defendant in response to paragraph 6 of his defense. In that regard counsel for the 1st defendant, who also represents the 2nd defendant, argues that the court should not make such an order without an application against the 1st defendant, giving it an opportunity to respond.

[29] Notwithstanding this, I am of the view that the Court has the power under Rule 26.1(2) ***"to take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective."*** This is a case which has been in the legal system for almost 2 years and locked in interlocutory applications and submissions which have to a great extent hindered the advancement of these proceedings. There is a clear duty on the 1st defendant at least to disclose some of the information requested by the claimant; albeit far more narrowly than has been requested. I can see no useful purpose in requiring further delay in requesting submissions on the issue at hand. The claimant has made a request by way of application for the disclosure of the full names and responsibilities of all employees. This is too broad a request. However, it would not prejudice either of the parties if the Court were to order disclosure of the information outlined in sections 12 and 13 of the Newspaper Act so as to further the overriding objective to do justice in this case and to advance the process of case management.

Application for an Unless Order against the 1st Defendant.

[30] On 16th August, 2017 Master Agnes Actie, after considering an application from the claimant, struck out certain paragraphs of the defense of the 1st defendant. According to the honourable Master, the 1st defendant's response to paragraphs 2 to 9 of the statement of claim were bare denials and were not in compliance with rule 10.5. In that regard the 1st defendant amended its defense on 15th January, 2018. While the 1st defendant amended its responses to paragraphs 2, 3 and 4, it has simply avoided any response to paragraphs 5 to 8 of the statement of claim. It is on this basis that the claimant seeks an order from the court compelling the 1st defendant to respond to the said paragraphs and a further order that unless this is done the defense is to be struck out and judgment entered for the applicant.

[31] The 1st defendant, in its written submissions at paragraph 15, argues that ***"the Respondent was not obligated by the civil procedure rules to respond to paragraphs 5, 6, 7 and 8 of the statement of case, as it is clear that both the letter and spirit of the CPR contemplate that a***

party defends the allegations made against it, and the allegations made in the aforementioned paragraphs were made in relation to the 2nd Defendant, who himself has filed a defense on 18th December, 2018." From the onset I wish to state that I do not accept this submission. In fact at paragraph 34 of her decision in this particular case Master Actie addressed this specific issue and stated as follows:

> ***"The claimant states that Cozier was the director, officer or had control of the publication or had the power to restrict the publication. The first defendant has not given a proper response to the claimant's assertions in relation to Dwight Cozier's participation in the publication. A defendant is under a duty to plead its version of facts in the defence to put the claimant on notice of the type of defence that he/she would be faced with at trial."***

[32] The basis therefore for striking out the paragraphs in the defense was, at least partially, because the Master of was of the view that the 1st defendant was under an obligation to respond to the paragraphs and had failed to do so. I too agree with that position. When one examines the nature of the content of the paragraphs in the statement of claim it is imperative that the 1st defendant complies with the provisions of Rule 10.5 and respond directly to the allegations contained therein. It follows therefore that it would not be proper for the 1st defendant to completely ignore the sentiments expressed by the Master in her judgment dated 16th August, 2017 and simply provide no answer to the allegations raised in paragraphs 5 to 8 of the statement of claim.

[33] The 1st defendant points to paragraph 58 of the amended defense to argue that it has in fact presented a version of facts which differ from what is contained in paragraphs 5 to 8 of the statement of claim. I however do not agree with this submission and I accept the submissions of the claimant that the 1st defendant should be compelled to respond to the paragraphs in question in order to ensure that the spirit and intent of Rule 10.5 of the CPR is complied with. When one examines the content of sections 12 and 13 of the Newspaper Act it does not seem correct to me for the 1st defendant to describe itself as the editor of the newspaper as it did in paragraph 58 of the amended defense. What is required by law is the christian name, surname and address of an individual. This suggests to my mind that the sections refer not to a corporation but to person. In that regard the content of paragraph 58 cannot suffice as a substitute for the 1st defendant's failure to directly respond to paragraphs 5 to 8 of the statement of claim.

[34] The claimant also requests that not only should the court compel the 1st defendant to respond to the allegations but that an unless order should be granted for the failure to comply with any order the court makes. In that regard Rule 26.4(1) of the CPR states as follows:

> ***"If a party has failed to comply with any of these rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".***

[35] The 1st defendant argues that this is not a proper case for an unless order to be made. It is further argued that it would not be right for the court to exercise such a ***"powerful weapon simply because the respondent did not defend its claim in accordance with the applicant's preference."*** However, when one examines the previous decision of the Master on 16th August, 2017 it would seem clear that the 1st defendant had failed in its obligation to comply with the provisions of Rule 10.5. At paragraph 39 of her judgment she states: ***"Having reviewed the pleadings, I am of the opinion that Paragraphs 2 to 9 of the first defendant's defence are bare denials without providing any reason for the denials, in direct contravention of CPR 10.5 (4) and (5) of the CPR 2000. Accordingly, the paragraphs 2 to 9 of the first defendant's defence are struck out."*** Therefore, the Master struck out the paragraphs and clearly articulated the view that the 1st defendant had an obligation to provide an answer to the paragraphs complained of and yet in its amended defense the 1st defendant opted to disregard its obligations as contained in the rules. As I have indicated earlier, this is a case which has spent the better part of the last 2 years locked in case management over issues as trite as the defendants' duties to comply with the provisions of CPR Rule 10.5. In so far as that is the case I am fully satisfied that not only should an order be made to compel the 1st defendant to respond to the content of paragraphs 5 to 8 of the statement of claim, but to go further and order that unless this order is complied with the defense is to be struck out not only for its failure to comply with the rules but also because the continued disregard of the rules in this manner amounts to an abuse of the process of the Court.

[36] The claimant also requests that paragraph 13 of the 1st defendant's amended defense be struck out for failure to comply with Rule 69.3 of the CPR. I however do not agree that this request should be granted. In an examination of paragraphs 13 and 14 of the defense (which will not be repeated here due to its length) the 1st defendant has provided sufficient information in order to comply with Rule 69.3 of the CPR for the same reasons outlined in paragraphs 22 and 23 of this judgment.

[37] In the circumstances I make the following orders and directions:

(a) The 2nd defendant is ordered to comply with the provisions of Rule 10.5 of the CPR by responding to paragraphs 2, 4, 14 and 16 of the claimant's statement of claim;

(b) Paragraphs 7 through to 9 of the 2nd defendant's defense are struck out for failure to comply with Rule 10.5(3) and (4) of the CPR;

(c) The 2nd defendant is granted leave, pursuant to orders (a) and (b) above, to amend the defense filed on 18th December, 2017 in order to fully comply with the provisions of Rule 10.5 of the CPR;

(d) The claimant's request for an order striking out paragraphs 37 through to 44 of the 2nd defendant's defense is denied;

(e) The defendants are jointly ordered to disclose the christian name, surname and the place of abode of the editor and/or printer, publisher or proprietor of the newspaper in keeping with the provisions of sections 12 and 13 of the Newspaper Act CAP18.23 of the Laws of Saint Christopher and Nevis;

(f) The claimant is awarded costs on the application against the 2nd defendant in the sum of $1000.00 reduced to $800.00 on the basis of the measure of success of the 2nd defendant as relates to the 3rd order sought in application dated 15th January, 2018;

(g) The 1st defendant is ordered to respond to paragraphs 5, 6, 7 and 8 of the statement of claim;

(h) Leave is granted for the 1st defendant to further amend its defense within 14 days from the date of service of this order. If the first defendant fails to comply with this order and order (g) above the defense of the 1st defendant is struck out and judgment is to be entered in favour of the claimant;

(i) The claimant's request for an order striking out paragraph 13 of the 1st defendant's amended defense is denied;

(j) The claimant is awarded costs on the application against the 1st defendant in the sum of $1000.00 reduced to $800.00 on the basis of the measure of success of the 2nd defendant as relates to the 2nd order sought in application dated 24th January, 2018

Ermin Moise
Master

By the Court

Registrar