THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2006/0420

BETWEEN:

SEAN STANLEY	CLAIMANT

and

JULIAN SUTHERLAND	FIRST DEFENDANT
JUSTIN DOUGLAS	SECOND DEFENDANT
BDS LIMITED RADIO TRADING AS NICE RADIO	THIRD DEFENDANT
CARLOS MALONEY & COMPANY LIMITED	FOURTH DEFENDANT

Appearances:
Mr. Ronald Marks for the Claimant
Mr. Bertram Commissiong Q. C. amicus curiae for the First Defendant
Mrs. Kay Bacchus-Baptiste for the Second and Third Defendants
Ms. Susanne Commissiong for the Fourth Defendant

2018: November 26
2019: January 15

JUDGMENT

BYER, J.:

BACKGROUND:

INTRODUCTION:

[1] The Claimant filed a Claim Form and Statement of Claim on the 9th November 2006 against the Defendants for damages for libel for contents of a letter captioned *"Re: Petition for the President of the Saint Vincent and the Grenadines Table Tennis Association Immediate Removal"* and dated 28th August 2006 which was written by the First Defendant and which the Claimant alleged contained defamatory allegations against him. The First Defendant provided the Second Defendant with a copy of the said letter which was read by the Second Defendant on the 29th August 2006 on a radio station owned and operated by the Third Defendant called Nice Radio and

further on a radio station owned and operated by the Fourth Defendant called Cross Country Radio.

[2] The words complained of by the Claimant which were contained in the said letter, which was addressed to Mr. Trevor Bailey, the President of the National Olympic Committee, read in its entirety as follows:

"Mr. Trevor Bailey
The President
National Olympic Committee
Kingstown

Dear Mr. Bailey

RE: PETITION FOR THE PRESIDENT OF THE SVG TABLE TENNIS ASSOCIATION IMMEDIATE REMOVAL

Table Tennis in St. Vincent and the Grenadines is at a critical stage where the opportunities available for the expansion of the game are not being managed properly. The Youth Programme currently in progress is a positive one but there are a number of gross irregularities in this programme and the Association that need your urgent attention.

The President is manipulating and dictating to most of the present executive members, no proper records are being kept including financial transactions; information and documents are being kept from the current executive. All correspondence are being prepared and signed by the President without the Secretary's knowledge, copies of same are not being presented to the Executive and being filed.

To date, no records are being handed over to the newly elected Secretary.

We, the undersigned members and players in the interest of the development and expansion of Table Tennis throughout St. Vincent and the Grenadines have signed the attached petition for the immediate removal of the President for the following reasons:

- *Failing to produce the detailed and audited financial report for 2005. It must be highlighted that during this period the President's wife was the Secretary and they were the only two signatories on the Association's bank account.*

- *The lending of the Association's funds to Immediate Past President, Mark Charles without the Knowledge of the then Executive members. There are no records to show repayments, if any, of this loan.*

- *Deliberate acts of match-fixing during tournaments, the most recent being the Jim Maloney open in July 2006.*

- *The alleged selling of the Association's donated property (rackets, balls, rubbers) and no records of monies being deposited in the Association's accounts.*

- *Failing to disclose the amount of money in an account the Association had at the National Commercial Bank, which was withdrawn and closed without the knowledge of the current Executive members.*

- *Refusing to disclose the current financial status of the Association to the newly elected body.*

- *Refusing to submit a written report including financial statements of the recently concluded Level One coaching course conducted by Mr. Richard McCafee in May 2006.*

- *Deliberately misinforming the present Executive in order to use the Association's funds to participate in an over thirty-five Table Tennis tournament in Puerto Rico, in July 2006.*

- *Deliberately withholding information from the present Executive, using his wife to write letters seeking sponsorship unknowing to the present Executive members.*

These irregularities are just a few, should the President remain in office the Table Tennis Association and the game will suffer tremendously. Your immediate intervention is needed."

Yours sincerely,

Julian Sutherland
Hon. Secretary
S.V.G.T.T.A."

[3] The Claimant avers that the words referred to him in his capacity as President of the Saint Vincent and the Grenadines Table Tennis Association (SVGTTA) at the material time.

[4] The Defendants by the filing of their defences rely not on a dispute as to the meaning of the words and whether they were defamatory of the Claimant or not, but rather raised and chose to rely on the defences of justification and fair comment in the case of the First, Second and Third Defendants and qualified privilege in the case of the Fourth Defendant.

[5] I must note at this point that the Court at the writing of this judgment is not in receipt of any closing submissions on the part of the claimant or the First Defendant. I therefore will be relying on the following documents as filed:

1) Skeleton arguments of the Claimant filed on the 7/11/17
2) Skeleton arguments of the Fourth Defendant filed on the 7/2/18
3) Submissions of the Second and Third Defendants filed on the 9/2/18
4) Legal submissions of the Second, Third and Fourth Defendants filed on the 16/11/18

[6] Having perused these documents, and upon the parties agreeing that this court will only be determining liability at this stage I agree with the issues as identified in the Submissions of the Second, Third and Fourth defendants namely:

1) Whether the words spoken of are capable of being defamatory.
2) Whether the First, Second, Third or Fourth Defendants can avail themselves of the defence of fair comment on a matter of public interest.
3) Whether the words were published on an occasion of qualified privilege or independent privilege.
4) Whether the Second, Third or Fourth Defendants are liable in damages.
   And additionally in this court's mind
5) Whether the First defendant can avail himself of the defence of justification, that the words were true in substance and fact.

[7] These issues although identified in this manner will be dealt with in the course of this judgment in a slightly different order given the manner in which the evidence and the case unfolded.

Issue #1: Whether the words spoken are capable of being defamatory and were in fact defamatory of the claimant.

[8] In looking at whether words are capable of being defamatory, the claimant's submission is that when one looked at the words complained of, considered in their natural and ordinary meaning, they could only have meant and were understood to mean[1]:

a. The Claimant and his wife colluded with regard to the SVGTTA's bank account imputing that they were dishonest in their dealings with the Association's money.

b. The Claimant without any authority loaned the SVGTTA's funds to a past executive member of the SVGTTA with no record of it having been repaid; implying that the Claimant is involved in secretive and dishonest practices.

[1] Paragraph 1.4 of Claimant's Submissions filed 7/11/17

c. The Claimant was guilty of match-fixing which is an illegal activity and anathema in the sporting world.

d. The Claimant having fraudulently sold the SVGTTA's equipment and failed to deposit these monies to the SVGTTA's account suggests that he had converted the monies to his own use.

e. With regard to the SVGTTA's bank account at the National Commercial Bank, the Claimant withdrew the monies and closed the account on his own initiative and used the monies for his personal benefit.

f. The Claimant was concealing financial information of the SVGTTA suggesting that he was being dishonest and in particular with funds in regard to a coaching course.

g. The Claimant deliberately misinformed the Executive of the SVGTTA in order to use the SVGTTA's funds for his own benefit.

h. The Claimant in partnership with his wife solicited sponsorship for their own personal aggrandizement.

[9] The claimant submitted to this court that those words, once heard by individuals, could not be construed other than to render the imputation as given by him. That is, that the words impugned the character of the Claimant and that he had conducted himself in such a way while President of the SVGTTA in that he was dishonest, that he was colluding with others to defraud the SVGTTA and that he engaged in practices that would have been harmful to the sport as a whole on the island.

[10] The Defendants (the Second, Third and Fourth named Defendants) in their submissions never spoke to whether the words in their natural and ordinary sense could be considered defamatory but rather whether they had a defence to the possibility of them being so found. It is therefore for this court to first determine whether the words can be considered defamatory and then to examine whether the Defendants have any viable defence thereto.

Court's Considerations and Analysis

[11] In Gatley on Libel and Slander[2], the definition of defamation is stated thusly "defamation is committed when the Defendant publishes to a 3rd person words or matter containing untrue imputation against the reputation of the claimant".

[12] In the case of Lyndon Duncan v Edison Baird[3] Michel JA had this to say at paragraph 11, "defamation at common law is the publication of a statement which tends to lower a person in the estimation of right thinking members of society. To succeed in an action for defamation therefore, a claimant must prove the making of a statement by a defendant tending to lower the claimant in the estimation of right thinking members of the society and the publication of that statement to a third party or parties".

[13] Thus what is required for a claimant to succeed on a claim of this nature, is that he must show that the words used in fact lowered him in the estimation of others and that those words were published not to the person himself, but to a third party.

[14] A relevant consideration therefore must be what is defamatory. This, as has been stated in the case of Beulah Mills v Michael Perkins and Nevis Broadcasting Limited,[4] must relate to the nature of the statement made by the Defendant, as words may be defamatory even if they are believed by no one. Therefore the statements that are complained about must be assessed by the court as to whether an "ordinary intelligent and unbiased person reading the words would understand them as terms of disparagement and an allegation of dishonest and dishonourable conduct".[5] However in undertaking this assessment, in utilizing the "ordinary man" on the street the Court will not consider that this ordinary man is "unduly suspicious; he is not avid for scandal [And]. He would not select one bad meaning where other non-defamatory meanings are available".[6]

[15] So the process is therefore one where this court must look at the words used as a whole. What the First defendant may or may not have intended is immaterial in making this determination.[7]

---

[2] 10th ed paragraph 1.3

[3] AXAHCVAP2012/0008

[4] NEVHCV2009/0098 per Williams J at paragraph 73

[5] Bollers J in **Ramsahoye v Peter Taylor Co Ltd** [1964] LRBG 29

[6] **Bonnick v Morris** [2002] UKPC 31 per Nicholas LJ

[7] **Learie Carasco (aka) Rick Wayne v Neville Cenac** Cit App 6/1994 St Lucia per Byron JA

[16] In the case at bar, in relation to the words contained in this Petition for removal penned by the First defendant, I accept that the ordinary and natural meaning of these words to a reasonable person would be that the words are capable of being defamatory and that the claimant had committed acts of fraud and dishonesty.

[17] I am therefore of the opinion that the words written by the First defendant are defamatory on the face of them.

[18] In determining whether the words are in fact defamatory, there is a necessary corollary to that assessment as to whether the words are defamatory of the claimant.

[19] In the pleadings by the First defendant the only document upon which the court can rely, given how the trial of this matter transpired with the First defendant being precluded from giving evidence on his own behalf as a consequence of how he conducted his defence, it is clear that the First Defendant and none of the other defendants denied that the words spoken and conveyed referred to the claimant.

[20] Indeed it was entirely incumbent upon the claimant to prove that he is identified as the person defamed. As was said "it is an essential element of the cause of action for defamation that the words complained of should be published of the Plaintiff. That is to say, it must be capable of referring to him. Where the Plaintiff is expressly identified by name, it is not necessary to produce evidence or to provide evidence to prove that anyone to whom the statement was published did identify the plaintiff. The question is not whether anyone did identify the claimant but whether persons who were acquainted with the plaintiff could identify him/her from the words used".[8]

[21] The words expressly stated that it was in reference to the President of the SVGTTA. In 2006 the only president that held office was the claimant. There is no doubt in my mind therefore that not only were the words capable of being defamatory, that the words were in fact defamatory of the claimant in impugning his character and moral fiber and that finally, the words referred to the claimant and no one else.

[22] However even though this court has made those findings, the defendants have said that no liability can attach to them and they rely on the defences of justification, fair comment and qualified privilege which I will endeavor to address now.

---

[8] Gatley on Libel and Slander 10th Ed Para 7.1

Issue #2: Whether the First, Second and Third defendants can avail themselves of the defence of justification.

[23] As alluded to earlier in this judgment, the First defendant by order dated the 6th June 2018, this court having tried to assist the First defendant and upon intervention amicus by Counsel for the Second and Third defendants, the First defendant was ordered to seek counsel due to gross irregularities that were committed during his personal conduct of his matter. It was clear to the court that the First defendant required considerable help to put his house in order and make the best possible defence he could to the court without prejudicing the claimant who had been waiting for trial since 2006. In that vein, the court made an unless order that if the First defendant by the adjourned date of the 30th October 2018 failed to have counsel, the First defendant would be constrained to conduct his case without the benefit of witnesses or witness statements either by himself or others. The trial of the matter took place on the 6th November 2018, (even after the due date for trial) and the First defendant attended with Mr. Bertram Commissiong Q.C. who informed the court that he was merely there to assist the First defendant. No other application was made on behalf of the first defendant and the order of the 6th June 2018 therefore stood for the trial of the matter.

[24] Therefore the only document that was before the court setting out the case of the First defendant was his amended defence, filed in the proceedings on his behalf on the 7th August 2009.

[25] At paragraph 41 of the Amended defence the First defendant relied on the plea of justification and pleaded the following:

"41. In the premises and relying on the matter pleaded in paragraphs 8 to 40 inclusive above in their natural and ordinary meaning the said words published in the letter of 28th August 2006 are true in substance and in fact.

PARTICULARS

The Claimant in his capacity as the President failed to produce detailed and/or proper financial reports for 2005. In fact by his own admission he could not because he had "misplaced" the documents.

During the 2005 period the Claimant's wife was one of the signatories on the SVGTTA's account. When the Claimant was elected President he became a signatory on the SVGTTA's accounts. During these time periods both the Claimant and his wife signed checks payable to cash and to the Claimant personally for which no vouchers and/or receipts have been produced. There is therefore no proper account for that and other money spent by the Claimant from the SVGTTA's account.

Funds from the SVGTTA were lent to immediate past President Mark Charles without the knowledge of the association's then Executive and there were records to show the repayments, if any.

Bob Ballantyne was deliberately seeded 3rd instead of 2nd at the Jim Maloney Tournament in July 2006.

The SVGTTA received a donation of 10 table tennis rackets: 3 were sold by the President and there is no record of the money for the sale of the same being deposited in the association's account(s).

The Claimant failed to disclose the amount of money in the SVGTTA's account at the National Commercial Bank and the money was withdrawn and the account closed without the knowledge of the then Executive.

Despite being mandated to do so by the NOC the Claimant refused and/or neglected to provide the necessary documentation on the finances of the SVGTTA to its Executive and/or members up to 30th May 2007. At that point he admitted that he did not have any paperwork for 2005 and contrary to his assertions he did not have all the paperwork for 2006.

The Claimant refused to submit a written report and proper financial statements for the Level-I Coaching Course conducted by Mr. Richard Mc Cafee in May 2006.

Unknown to the SVGTTA's Executive the Claimant did use the SVGTTA's funds to go to and participate in an over-35 tournament in Puerto Rico in July 2006; he gave the Executive different travel dates to deliberately create the impression that he would not be in Puerto Rico at the time of the aforementioned tournament.

Unknown to the SVGTTA's Executive the Claimant's wife, who was not Secretary at the time, wrote letters on behalf of the SVGTTA seeking sponsorship for the association, those letters were never brought to the SVGTTA's Executive meetings and were not turned over to the First Defendant as Secretary."

[26] These were the only statements as contained in his pleadings and upon which the First defendant relied to support his plea of justification. Indeed the defence as filed on behalf of the First defendant in relation to paragraphs 13 to 40 sought to set the backdrop for this plea and relied on paragraph 41 as the particulars.

[27] Pleadings or statement of cases as has been long recognized "is the formal statement of a party's case. It must contain a concise complete statement of facts and matters on which a party relies".[9]However they are NOT evidence. It is the witness statements that provide the court with the information upon which to make a determination and without those, the hands of the court are tied.

[9] Atkins Court Forms Vol 13(3)

[28] However since the pleading was raised, it is incumbent on this court to at least make an inquiry whether there is anything before it upon which it can make a determination or finding in favour of this pleading.

[29] The defence of "justification is that the words complained of were true in substance and fact".[10]

[30] Indeed, it is stated that justification can be raised as a defence to defamation, as the law will not permit a person to recover damages in respect of an injury to a character which he either does not or ought not to possess.[11]

[31] Therefore when it comes to justification it is for the defendant to plead it and to *prove* it affirmatively once they have raised this defence. In the case at bar as stated there is no evidence, there is no proof. This court has even attempted to peruse the documents that were disclosed in the matter on behalf of the First defendant when he was initially represented by counsel.

[32] What I have been able to decipher is that there was some documentary proof provided for subparagraphs 41 (a), (i) and (j) of the amended defence that could have led credence to the allegations lobbed at the claimant[12]. However, the essence of the defence of justification is that it can only succeed where the defendant proves his statement to be true in substance. Thus if it is "inaccurate only in minor details which do not add to the "sting" of the charge the defence will still succeed."[13]

[33] However if on a whole the defendant fundamentally fails to prove each allegation, then the defence must fail.[14]

[34] In this regard despite an attempt to extrapolate from the documents before me any support for the defence as filed, I find that the First defendant has not been able to prove the substance of the allegations contained in the letter written to the President of the National Olympic Association. Thus, although I accept that the words complained of can be understood to convey allegations of general wrongdoing against the Claimant while at the helm of the SVGTTA, the allegations were

[10] Halsbury Laws of England Vol 32 para 582
[11] Halsbury Laws of England Vol 32; **McPherson v Daniel** (1829) 10 B & C 262 at 272 per Littledale J
[12] Pages 154,156, 158,159, 161-162 and 163 of the Amended Trial Bundle filed on the 7/5/18
[13] Gilbert Kodilyne Commonwealth Caribbean Tort Law 5th Ed at page 273
[14] Op Cit at page 274

each individually made, requiring specific proof for each. The only evidence this court could rely on were the documents as identified and which were not objected to by the claimant. It is on this basis, without more being provided, that I find that the First defendant has not been able to prove the bases of this defence and as such I am satisfied that this defence fails.

[35] Additionally, although the Second and Third defendants pleaded justification in their defence filed on the 31st March 2008, none of the witnesses who appeared on behalf of these defendants nor the submissions filed on behalf of these defendants raised this or relied on this pleading. I therefore also find that the Second and Third defendants have failed on this defence.

Issue #3: Whether the Defendants can avail themselves of the defence of Fair comment on a matter of public interest.

[36] All of the defendants to this claim have pleaded and relied on fair comment as a defence to the claim.

[37] Fair comment has been defined to include circumstances where "…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 and even harshly so long as they do so honestly and without malice".[15]

[38] The essence of this defence is therefore that the "defamatory matter must appear on its face to be a comment or opinion and not a statement of fact".[16]

[39] As Gatley on Libel and Slander stated this defence is at three stages. [17]*"To succeed on this defence the defendant must show that the words are comment and not a statement of fact. However an inference of fact from other facts referred to may amount to a comment. He must also show that there is a basis for the comment, contained or referred to in the matter complained of. Finally he must show that the comment is on a matter of public interest one which has been expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern."*

[15] **Lyndon Duncan** case paragraph 15
[16] Commonwealth Caribbean Tort Law page 276
[17] Op Cit paragraph 12.2

[40] There is therefore a three prong approach in this court's mind to determining whether this defence is in fact available to those who plead it. I will therefore start with the First defendant as his position is fundamentally different from the Second, Third and Fourth defendants.

Fair Comment in relation to the First Defendant

[41] Once again all that the court had to assist it in this assessment in relation to the First defendant was his defence. At paragraph 43 of the defence the First defendant pleaded the following:

> *"43. The publication of the said words was also fair comment on matters of public interest, namely the use of funds portions of which are solicited partly from sponsorship from private entities and corporations and partly from Government and the National Olympic Committee.*
>
> *PARTICULARS*
>
> *The SVGTTA solicits funds for its various activities through sponsorship and donations.*
>
> *That sponsorship comes from various business places and in some instances from the government and/or National Olympic Committee.*
>
> *The SVGTTA is mandated by its constitution and the National Sports Council to produce financial statements and under the Claimant's presidency, and while he has been in control of the finances, the association has not done so.*
>
> *By not producing financial statements the SVGTTA has not accounted for the money it has collected from the public and private entities and agencies.*
>
> *In the premises the publication of the words complained of was fair comment by making public the Claimant's failure to account for the spending of the SVGTTA's funds."*

[42] Having looked at this pleading, I find that it is of very little assistance to the matter at hand. The pleading of the First defendant relies heavily on the element of this defence that there must be a public interest in the information being disseminated. However, the pleading failed to address a further fundamental element of the defence, that of the information having been given by way of a comment and not by way of statement of facts. This is a primary requirement to be able to rely and ultimately succeed on this defence. Indeed, it cannot be lost on this court that "… this defence is concerned with the protection of comment *not imputations of fact*. If the imputation is one of fact, a ground of defence must be sought elsewhere"[18] (My emphasis added).

[18] Lord Diplock in **Silkin v Beaverbrook Newspaper Ltd** [1958] 1 WLR 743

[43] Therefore I find that the First defendant cannot even make it past the first element of this defence and I find that the words used by the First defendant were not comment but rather statements of fact which he had sought to justify. This defence therefore also fails for the First defendant.

Fair Comment on the part of the Second, Third and Fourth Defendants

[44] In relation to these defendants, as I indicated the position is slightly different. These defendants are alleged to have read the contents of the letter or caused such reading to have occurred on national radio. The allegations contained in the statement of claim against these defendants are as follows:

"7. On the 29th day of August 2006, at about 7:00am and repeated at 8:00am, 4:00pm and 5:00pm in a radio broadcast programme entitled "Nice Radio News and Sports" the second and third-named Defendants falsely and maliciously broadcast or caused to broadcast and published by radio of and concerning the Claimant and of him in the way of his position as President of the SVGTTA the said words by reading the said letter written by the first-named Defendant during the course of the said broadcast programmes entitled "Nice Radio News and Sports".

8. That said day August 29th 2006 at about 7:10am and repeated at 6:30pm during the course of another broadcast programme entitled "Cross Country Sports" the second and fourth named Defendants falsely and maliciously broadcast or caused to be broadcast and published by radio of and concerning the Claimant and of him in the way of his position as President of the SVTTTA the said words by reading the said letter written by the first named Defendant during the course of the said broadcast programmes entitled "Cross Country Sports".

[45] So the allegations are therefore in relation to the reading of the letter on the stations of the Third and Fourth defendant by the second defendant.

[46] The evidence of the Claimant is contained in his witness statement at paragraphs (as numbered by this court as the same had no numbers on filing) 1 and 2:

"1. On the afternoon of August, 29th 2006 I was listening to a radio broadcast programme entitled "Nice Radio News and Sports" hosted by the Second Defendant on the Third Defendant's Radio Station called Nice Radio when I heard a letter authored by the First Defendant according to the host, of and concerning me being read by the Second Defendant. In fact I had been called by friends to say that it had been aired earlier and was causing some concern hence the reason I was listening.

2. That said day I also heard the said letter being read on Cross Country Radio owned by the Fourth Defendant in another radio broadcast programme entitled "Cross Country Sports" at 6:30p.m which broadcast I heard and recorded. From reports received I understood that the broadcasts had been aired earlier in the day on the above-mentioned stations and that these were repeat broadcasts."

[47] On cross examination the Claimant did not advance any further information in this regard. In fact there was no questions advanced to him as to the purported recording that he said he made on the 29th August 2006 nor was he asked about the contents of what was in fact said on the complained of radio shows by the Second defendant.

[48] The claimant however brought a witness in the person of Mr. Julian Small who said at paragraph 5 (again paragraph as numbered by the court) that:

"5. I called in after those two (2) callers and rebuked Mr. Justin Douglas stating that the policy eschewed with regard to the Football Federation should have been applied to the Saint Vincent and the Grenadines Table Tennis Association and that such discussions should not have been entertained."

[49] So the evidence of the claimant and his witness was that the letter was read and the inference that was left to the court it appears by both the claimant and his witness was that the letter was read in its entirety.

[50] The witness statement filed on behalf of the second Defendant also stated at paragraph 6 that he read the letter:

"6.The letter was then read by me on the Third and Fourth Defendants' radio stations as part of their individual sports news programs. The National Broadcasting Corporation's Radio 705 also carried the issues and the petition as a news item; this broadcast was not done by me."

However, when he came to give evidence at the trial of this matter he said three things of note regarding the said letter: Firstly, that he had not discussed the letter with the claimant before disclosing it on the news report as part of his programme; Secondly that as a news person he did not read the letter in its entirety but that in fact he had just pointed to what had been raised against the claimant in summary form; and Thirdly that as a reporter he simply said that the claimant had been accused of match fixing but that he did not recall reading substantially from the letter.

[51] The Third defendant by way of the evidence of Douglas Defreitas at paragraph 6 of his witness statement stated that he also read the letter:

"6.The letter was then read by me on the Third and Fourth Defendants' radio stations as part of their individual sports news programs. The National Broadcasting Corporation's Radio 705 also carried the issues and the petition as a news item: this broadcast was not done by anyone connected with the Third Defendant.

However, on cross examination he told the court that he read the letter after the controversy broke and that he heard it being read by the Second defendant and asked to see the letter but that he did not recall hearing or apparently reading that the claimant had been accused of certain of the activities contained in the letter.

[52] Finally, the Fourth defendant who merely owns the radio station, on which the Second defendant hosts a sports show, by its Managing Director, Mr. Carlos Maloney, told this court categorically that he did not hear the show and that he got his information from what the Second defendant told him.

[53] So that was the evidence in a nutshell. As a whole, the impression that this court had of the claimant was that he was less than forthright in answering the questions put to him in this regard and seemed to inflate the circumstances as to what occurred to his own benefit. If this was undertaken with a view to make the court more empathic to his cause it had in this court's mind the opposite effect. Rather, this caused the court to consider his evidence on the whole sequence of events as being exaggerated and less than credible.

[54] I in fact preferred the evidence given on the part of the defendants (at least those who were able to do so). The court found them as credible and forthright. Therefore, on the narrow issue of whether the allegation by the claimant that the letter was in fact read in its entirety by the Second defendant on the shows hosted on the Third and Fourth defendant's radio stations, I accept that on the balance of probabilities that the letter was not read in its entirety. Rather, that the same was read as a news item with highlights of the same being given to the public audience.

[55] This court in coming to this determination considers it as a matter of judicial notice that the programmes that these radio stations run for sports or any specified topic only are part of the daily scheduled programming. As such they tend to be curtailed by time constraints that would not allow for wholesale verbatim recitations of one solitary news item.

[56] Additionally, even though the claimant made reference to the number of times that the broadcast was aired, he failed to bring any evidence of such airing by way of a witness or transcript of the programme against which he claimed he had been aggrieved. On a balance of probabilities, I accept that at the very most, there was one reading of the letter and further accept that the letter was not read in its entirety.

[57] That being said and even though I have found that the First defendant is not entitled to rely on fair comment, that cannot be said to apply to the Second, Third and Fourth defendants without more.

[58] It has been held that words published whether by way of a caller on a live broadcast and I may add letter read on such a broadcast, may result in the Managing Director, the editor, the broadcaster even the host of the programme liable for defamatory remarks that are published or made maliciously.[19]

[59] Not only is the defence one that arises if there can properly said to be comments but also and additionally that the remarks or comments were not made maliciously.

[60] It was indeed unfortunate that the defendants seeking to rely on this defence, did not think that it would have assisted the court to have heard how the same was transmitted on the radio broadcasts. It was of some significance, that in the majority of the authorities perused it was clear that the parties had thought the matter of some significance to produce the taping or at the very least, the transcript of the offending programmes for the court to assess what was said.

[61] On what was produced to this court and by the own evidence of the defendants who seek to rely on this defence, it appears that the letter even if not read in totality, was read from in its original text. There is no indication that there was any editing of the same to allow for the actual host of the programme to have commented on what was said in the letter or to use the letter as a means of starting a topic of discussion on the scheduled programme. I therefore do not accept that the manner in which the information was transmitted amounted to comment within the confines of this defence and ultimately find that the Second, Third and Fourth named defendants cannot avail themselves of this defence in all the circumstances.

Issue #4: Whether the Second, Third and Fourth named defendants can avail themselves of the defence of qualified privilege.

[62] Although the pleadings of the Second and Third Defendants do not appear to have specifically pleaded qualified privilege but rather innocent dissemination, they have both relied on evidence that supported this defence and submitted in both pre trial submissions and in closing addresses thoroughly on the issue.

[19] **Beulah Mills** case paragraph 108

[63] This court will therefore look at this defence as pleaded and additionally, assess the availability of the defence of innocent dissemination pleaded in the defence filed on the 31st March 2008.

[64] A communication to the public at large upon a matter of public interest is privileged if it is a product of responsible journalism.[20]

[65] It is this principle that the Second, Third and Fourth defendants (hereinafter in this section referred to as the defendants) seek to find refuge for the words broadcast to the general public about the claimant in his role as president of the SVGTTA.

[66] In order for the defendants to establish this defence, once more the onus being on them, they must establish a number of elements. As was stated in the Court of Appeal decision of Lennox Linton and ors v Kieron Pinard-Byrne[21]:

"30. A reading of the cases from the UK and other Commonwealth countries would indicate that the purpose for which the law grants the privilege, certainly in the case of the media and its coverage of or reporting on matters of public importance, is to permit the media to carry out its primary function of disseminating information to the public on matters of public interest without running the risk that – because of innocent factual misstatements – the owners, operators, employees and/or contributors to the media would become liable in damages and otherwise to any person who felt aggrieved by the information disseminated. At the same time, the common law continued to seek to protect the reputation of persons (including public figures) from unwarranted attack. The balance to be struck between these two competing objectives of the common law is to be found in the concept of responsible journalism, so that the defence of qualified privilege is available to the media if the author and/or publisher of the information in the media conformed to the standard of responsible journalism."

[67] So it is therefore clear that there is no carte blanche defence which can be raised on the simple concept that the information disseminated was in the public interest but those who rely on this must go further and show that (a) the publisher was under a duty (legal moral or social) to those whom the material was published (which would be the general public) to publish the material in

[20] Halsbury Laws of England Vol 32 para 621
[21] DOMHCVAP2011/0017 per Michel JA

question and (b) those to whom the material was published had an interest to receive that material – "the duty-interest test".[22]

[68] Thus in order to make this assessment, the Court must have regard to the relevant circumstances of the communication.[23] Further, in deciding whether the defence of qualified privilege can be relied on, the judge in their assessment must decide on a single question, *"could whoever published the defamation given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?"*[24]

[69] Thus for this court to make such a determination it takes guidance from the court in Reynolds v Times Newspaper Ltd[25] and the words of Lord Nicholls who set out ten matters which must be taken into account in order to determine whether this plea can succeed. The ten matters are:

> *"1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.*
>
> *2. The nature of the information and the extent to which the subject matter is a matter of public concern.*
>
> *3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.*
>
> *4. The steps taken to verify the information.*
>
> *5. The status of the information. The allegation may have already been the subject of an investigation, which commands respect.*
>
> *6. The urgency of the matter. News is often a perishable commodity.*
>
> *7. Whether comment was sought from the claimant or some other person with knowledge of the facts.*
>
> *8. Whether the publication contained the gist of the claimant's side of the story.*
>
> *9. The tone of the publication.*

[22] **Lennox Linton** case para 32
[23] **David Bristol v Dr Richardson St Rose** Civ App 16/2005 per Rawlins JA para 15
[24] **Flood v Times Newspaper Ltd** [2012] UKSC 11 per Lord Brown para 113
[25] [1999]4 ALL ER 609 at 629 b-d

10. The circulation of the publication, including the timing."

[70] As the Judicial Board of the Privy Council stated in the Pinard-Byrne v Lennox Linton case[26] the question for the judge must be whether the defendants, were "acting responsibly and had a duty to the public to publish them".

[71] So in addressing its mind to this, this court must look at the factors as enunciated by Lord Nicholls as set out above, always bearing in mind that such indications are not to be followed slavishly and without context.

[72] Indeed "the rules of *Reynolds privilege* were … made to meet the reasonable demands of freedom of speech in a modern democracy by recognizing that there may be a wider privilege dependent on the particular circumstances"[27].

[73] In looking at the first point of what has now been called the *Reynolds privilege* it deals with the seriousness of the allegation, that is one must consider that the more serious the charge, the more the public is misinformed and the individual harmed if the allegations are not true.[28] When one considers the allegations that were lobbed at the Claimant in this regard, they were of a serious nature, but they were confined to the SVGTTA, not the public at large. I therefore consider that the allegations were serious but in the context of the proceedings I do not consider that they were so serious that the defendants could not consider the defence of qualified privilege.

[74] Secondly, whether the subject matter was of public concern. All of the defendants by their pleadings relied on the belief that the information was relevant to the public domain. This seemed to have been based on the consideration, that the SVGTTA relied upon both private and public funding for its activities and therefore there was an obligation to ensure that the sport was properly promoted and developed. Thus, even though the "public tends to be interested in many things which are not of the slightest public interest"[29] it is ultimately for the court to decide whether the subject matter complained of was of "public interest".

[75] This test is however not as "black and white" as one would be led to believe. The test seems to involve that balancing of public interest in the subject matter of the publication and the harm to the

[26] [2015]UKPC 41 at paragraph 31
[27] **David Bristo**l case at paragraph 21
[28] **Pinard-Byrne** at paragraph 31
[29] **Jameel and ors v Wall Street Journal Europe SPRL** [2006] UKHL 44 at paragraph 49 per Lord Bingham

claimant if the publication is in fact untrue.[30] That is as has been so succinctly encapsulated as the duty/interest test or the "right to know test".[31]

[76] In the words of Lord Bingham CJ in the Reynolds case he said it thusly "by that we mean matters relating to the public life of the community and those who take part in it including within the expression "public life" activities such as the conduct of government and political life, elections … and public administration but we use the expression more widely than that to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure but excluding matters which are personal and private such that there is no public interest in their disclosure."[32]

[77] In looking at this matter it was clear to this court that the SVGTTA was an institution that was part of the National Olympic Association (NOC), a body ultimately responsible for the efficient running of Olympic sports in the Island. By the very fact that the NOC had gotten involved in the business and functioning of the SVGTTA[33], that the witnesses for the defendants all stated that the issue of the governance of the SVGTTA had dominated the sports news for several months prior to the letter being published[34] and that the news story was simply the culmination of an ongoing very public debate, I am satisfied that the public was entitled to receive this information and the defendants had a duty to reveal it. In this court's mind this information therefore, did pass the public interest test.

[78] The question that must next be considered however is whether there was any justification for the defendants to have included the defamatory information. It was once again, without the defendants providing the necessary information upon which the court could consider whether this had been made out, that the court has had to in effect, perform some mental gymnastics.

[79] This court accepts from the limited evidence as to what was published, that it was confined to excerpts from the letter and not the letter in its entirety. However, this court is unsure as to what was said, that is as to which allegations were included in that synopsis of the letter. What I do accept is that even though portions were read, those portions that were read were "very damaging to Sean Stanley and his wife. It implicated them in allegations of impropriety with regard to the financial affairs of the Saint Vincent and the Grenadines Table Tennis Association. It also accused

[30] **Flood** case at paragraph 30
[31] **Flood** Case at paragraph 32
[32] **Flood** case at paragraph 33
[33] Admission by the Claimant on cross examination; Correspondence from the NOC to the SVGTTA and the Claimant at page 145, 146 and 150 of the Amended Trial bundle filed on the 7/5/18
[34] Evidence of Justin Douglas in chief and on cross examination that there had been several callers calling on the issue; Douglas Defreitas in his evidence in chief.

him of match fixing in organized Table Tennis competitions and of withholding information from the SVGTTA Executive"[35]. Once again in this court's mind, the statements that were included were for the defendants, required as "part of the story"[36]. However, I accept that there was no need to have read the entire letter to get this impression.

[80] It is therefore fundamental that the question must be asked: was it necessary for those allegations or any allegations to have actually been published in order to get across what was needed to be conveyed as to the escalation of the breakdown within the association. Were they needed as "part of the story"?[37]

[81] This really is a matter of how the story needed to be presented. In this regard, even though I may not have thought it necessary to include whatever was said to convey the impression that was given to the general public, I am satisfied that this does not preclude the defendants from continuing to rely on this defence. I am further satisfied that whatever the extent of the information that had been conveyed to the general public was required to indicate the escalation and that it involved matters that were not trivial and required the public's scrutiny.

[82] Steps four through to eight of those identified in the **Reynold's case** primarily deal with what has been considered as "responsible journalism". This inquiry is therefore centered on "whether the steps taken to gather and publish the information were responsible and fair".[38]

[83] Involved in this broad tenet of "responsible journalism" the court in the Flood case[39] identified several additional limbs which must be bourne in mind. These consisted of a three-pronged approach which included i) what steps were taken to verify the story; ii) what if any opportunity was given to the claimant to comment and iii) the propriety of the publication.

[84] Firstly, this court therefore needs to consider what steps were taken to verify the story as it was given in the news programme of the defendants. From the evidence it was clear that Justin Douglas "did not discuss the item with the claimant before discussing on my morning report".[40] However on re examination he told this court that the claimant had called him, it would appear after the news item was aired, and asked for a copy of the letter which he then provided for him. The other witnesses for the defendants only stated as to when they saw the letter but no one said that

[35] Witness statement of Julian Small paragraph 5 (as marked by the Court) filed 18/02/09
[36] **Jameel** case at paragraph 51
[37] **Jameel** case at paragraph 51
[38] **Jameel** case at paragraph 53
[39] Op Cit
[40] Evidence on cross examination of Justin Douglas elicited at trial on 6/11/18

the claimant was contacted before the show aired to get his views. Therefore, what verification could have been ascertained or indeed how could the viewpoint of the claimant have been obtained at that point when the approach to him was made post publication?

[85] In this court's mind this behaviour does not meet the threshold of responsible journalism, In the Pinard-Byrne case, Lord Clarke in delivering the judgment of the Board, spoke to the failure of the Respondent in that case to put his allegations to the Appellant before making them. It was in the face of that failure among other things that the Board found that the Respondent could not rely on the defence. As stated at paragraph 38 thereof in relation to the allegations leveled at the Appellant in that case, the Board made clear that "there must be a public interest in the publication of the details of the allegations of crime or professional misconduct and there must be *verification* because need for verification provides real protection for the individual concerned…".(My emphasis added)

[86] In that same case, the Appellant had in fact participated actively in the radio show on which the statements were made, but he was not asked to respond to the specific allegations. That alone in the Board's eyes, signaled the inability of the Respondent to rely and use the defence of qualified privilege.

[87] On the basis of all the authorities, I accept that this failure on the part of the defendants to verify the information they sought to convey without properly giving the Claimant any opportunity to have his side heard until after the words were already published, was a fundamental breach by the defendants with the result that they are unable to rely on that defence.

[88] Additionally, although no longer relevant given the finding of the court as stated above, this court has found no evidence of malice and find that even though the defendants are not entitled to rely on the defences raised for the reasons stated, I do not accept that those defences were defeated by the imputation of malice on their parts. As was stated in the case of Harrocks v Lowe[41] by Lord Denning M.R. "…a refusal to withdraw is not malice. Nor is a refusal to apologise…malice is usually found when there is spite and ill will or when the defendant does not honestly believe what he says to be true". Or it is displayed where "the overall tone of the offending publications also reeked of rancor rather than even handed reporting".[42]

[89] The onus is on the claimant to prove that the defendants were actuated by malice and on balance of probabilities I find that he has not discharged this burden, frustration perhaps but not malice.

[41] [1972] 3 ALL ER 1098

[42] **Pinard- Byrne** at paragraph 33

[90] The final issues raised on the pleadings on behalf of the second and third defendants was the issue of innocent dissemination. On the basis that this was not argued by counsel for these defendants, this court considers that this is no longer being pursued and I make no determination on the same.

[91] Additionally this matter coming on for trial some twelve years since filing, I decline to make any order regarding an Injunction against the Defendants.

THE ORDER OF THE COURT IS THEREFORE AS FOLLOWS:

1. The court having found that the words complained of were and are defamatory of the Claimant it is ordered that damages are awarded to the claimant against all the defendants to be assessed upon application by the claimant within 21 days of today's date and the application to be responded to within 14 days thereafter. The matter is to be listed before a Master of the High Court thereafter for trial directions.

2. The prayer for an injunction is refused.

3. Costs to the Claimant to be determined upon the completion of the assessment of damages duly undertaken.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar