EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: NEVHCV2009/0180

Between Dwight Cozier

Claimant

and

Mark Brantley
Gawain Fraites

Defendants

Before: His Lordship Justice Ermin Moise (A.g)

Appearances:

Mrs. Angela Cozier with Mrs. Emily Prentice-Blackett of counsel for the claimant
Ms. Dia Forrester with Mr. Gyan Robinson of counsel for the 1st defendant

Claimant, Mr. Dwight Cozier present
1st Defendant, Mr. Mark Brantley present

2019: March, 7th
March, 20th
June, 18th

JUDGEMENT

[1] Moise, J (A.g.).: On 8th December, 2009 the claimant brought this action for libel against the defendants. The matter has had a long history and finally came to trial on 7th March, 2019. In the meantime, judgment had been entered in default against the 2nd defendant and he has therefore played no further part in these proceedings. The issue for determination therefore is whether the 1st defendant is guilty of libel for which he must pay damages and be restrained from further publication of the words complained of. I have reviewed the evidence and given due consideration to the legal submissions made by both parties and concluded that the claim should be dismissed with costs to the 1st defendant. My reasons are as stated in the remaining paragraphs of this judgment.

The Facts

[2] In June, 2009, the claimant was a junior minister in the cabinet of the Nevis Island Administration. He had responsibility for Trade, Industry and Consumer Affairs. He states in his witness statement that he holds a Master of Laws degree from the University of Wolverhampton in the United Kingdom and has authored a book entitled "Regulating Modern International Financial Centers". He is a majority shareholder in SKN Choice Times Limited, a media company which owns Choice FM Radio and the SKN Leeward Times newspaper. He is also a shareholder and director of Ramsbury Properties Limited, a family company which owns real estate in Nevis.

[3] The 1st defendant is an attorney at law. In 2009 he was the Managing Partner in the law firm Daniel, Brantley & Associates. He was also then an opposition senator in the Nevis Island Assembly and the deputy political leader of the Concerned Citizens Movement (CCM). He has since been appointed to the office of Premiere in the Nevis Island Administration and Minister of Foreign Affairs in the Federal Government of Saint Christopher and Nevis.

[4] In June, 2009 there existed a website named sknlist.com/sknyahoogroups.com, which was administered and controlled by the 2nd defendant. It is apparent from the evidence that persons are able to post their own comments about a range of issues on the website. Thereafter members are able to add to those comments and continue the discussions taking place. The publications which the claimant found to be offensive to his reputation were made on that website. On 12th June, 2009 Mr. Brian Newman posted a comment using email address nbrian@live.com. The post states as follows:

> *Re: Mexican Workers in Nevis Staying at* ***Minister Dwight Cozier's Hotel***
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> *Now my fellow listeners, here in Nevis at this time we are speaking of a commission of inquiry and about transparency and good governance but yet we have some serious INSIDER TRADING that sent Martha Stewart straight to jail. Just for those who does (sic) not know this, we have Mexican workers here who is (sic) assisting in the rebuilding of Four Seasons Resort and guess where they staying? PINNEYS BEACH HOTEL. Who now owns PINNEYS BEACH HOTEL? Hon. Dwight Cozier and who is*

Dwight Cozier? A Minister of Government who sits in cabinet meetings and makes decisions. Nevis has so many guest houses and hotels hungry for a penny in these challenging times even some of the NRP supporters have guest houses and villas but Dwight Cozier, a minister of Government in the Nevis Island Assembly and owner of Pinneys Beach Hotel won the contract over everybody else and now making thousands from the Nevis Treasury. This is RAPE but have no fear Nevisians and Kittitians, CCM ***will conduct its own inquiry and it will be free of cost."***

[5] The claimant states that he clearly understood these words to refer to him and implied that he was guilty of gross criminal misconduct and fraud and that he should be jailed. According to the claimant, the following week, on 13th June, 2009, the article was posted or reposted by the 1st defendant and published and republished by the 2nd defendant. In fact the evidence shows that the 1st defendant had responded to a post of one "Denny" who had himself responded to Brian Newman's comment. "Denny" stated that "*if Dwight Cozier has a hotel-which* ***I didn't know*** *about-then he has the right to compete to host clients, regardless of their purpose for being* ***on island, and who brought them."*** It was to this comment that the 1st defendant replied and stated the following:

"You say Mr. Cozier "has a right to compete". But were other hotel and guest house *owners given the same right to compete for the business? I am always troubled by information like this. When all government printing goes to a printing company owned by* ***a government minister it's a little hard to accept that others can compete. When all the Land and Housing legal work goes to a Firm owned by government officials, it's hard to*** *accept that others can compete. So when the person posting this talks of all the workers being accommodated at one hotel/guest house in which a Minister is involved, it looks* ***very much like more of the same. It's obvious that*** *the Cabinet and therefore the Ministers of Government will know what business is coming to Nevis before the other business people in Nevis. They will know this because those coming in must interact with the government for approvals, permits etc. If Government Ministers are intent on benefitting themselves, then they do their deals even before legitimate business people* ***in Nevis know what's happening. This is wrong and would be unacceptable in most***

places. Those NRP Ministers look out for themselves first and everybody else comes ***after. Some may say that's ok. I find it reprehensible."***

[6] In his statement of claim the claimant asserts that the words complained of, including that of Mr. Brian Newman, meant and were understood to mean that:

(a) The claimant was the owner of Pinneys Beach Hotel;

(b) The claimant is guilty of the offence of insider trading as a Minister of the Nevis Island Government;

(c) The claimant is guilty of rape in its normal meaning or of some form of rape similar to the normal meaning;

(d) The claimant has defrauded the treasury of the government of Nevis of thousands of dollars which he is being paid as a result of winning a contract to host Mexican workers as the owner of Pinneys Beach hotel;

(e) The claimant defrauded the Nevis Treasury of monies dishonestly paid to him from the Nevis Treasury in order that he may accommodate Mexican workers at the said Pinneys Beach Hotel in his dual capacity as a Minister of the Nevis Island Government and the owner of Pinneys Beach Hotel;

(f) The claimant by his actions is guilty of insider trading and is liable upon conviction to imprisonment in a similar manner as Martha Stewart was 'jailed' or imprisoned for the said offence;

(g) The claimant in his dual role as Minister of Trade and Industry, Consumer Affairs and Import and Export Control and 'owner' of Pinneys Beach Hotel is dishonestly and fraudulently competing with the Nevisian Business Community.

[7] In his witness statement the claimant states that these emails and a flurry of emails on the same website commenting on and discussing them, created a firestorm of controversy on the island of

Nevis. Everywhere he went persons approached him asking if he had seen the emails and what his response was. Even persons whom he did not know were discussing the emails and expressing shock that he would steal from the treasury to buy Pinneys Beach Hotel while serving as a Minister of Government. He claims to have experienced great emotional distress and humiliation as a result of this. The claimant goes on to state that the 1st defendant knew very well that he was not an owner of the Pinneys Beach Hotel, as he had a conversation with the 1st defendant sometime prior to the publication of the emails in which he assured him that he was not buying the hotel, that his wife was the attorney for the hotel and that he does not benefit from the hotel in anyway.

[8] The 1st defendant, in his own witness statement, states that he is a member of the online blogging group SKN List which is housed on the website www.SKNVibe.com. He follows posts on the website and at times comments on them if he is of the view that the posts are a matter of national concern or the subject matter is such that it would be appropriate for him to comment on and express his views. He usually posts under his own name using his own email address. Mr. Brantley states that he did not post the first article which Mr. Cozier refers to. In fact after that article was posted there was a response from one "Obi" which was followed by a response to "Obi" posted under the address epitome001@yahoo.com. After that post came Denny's contribution to the discussion. It was to Denny's remarks that Mr. Brantley posted a reply. He therefore states that his post was 5 posts removed from the comment of Brian Newman. He goes on to state that he never reposted Mr. Newman's comments and never intended to do so. Mr. Brantley asserts that whenever a new comment is made the website automatically ensures that the thread of comments is visible below each post.

[9] As it relates to his own posting, the 1st defendant states that this was directed at Denny's comment and was a general comment in relation to government ministers and officials, which was the matter under discussion. He states that he alluded generally to Brian Newman's comment when he stated that ***"so when the person posti****ng this talks of all the workers being accommodated at one hotel/guest house in* ***which a Minister is involved, it looks very much like more of the same."*** According to the 1st defendant, the issue of government ministers using their position to their advantage to benefit themselves is a matter of public interest and pleads the defence of fair comment in the event that his words are found to be defamatory.

[10] The 1st defendant also makes reference in his witness statement to the decision of Redhead J in the case of *Ramsbury Properties Limited v. Ocean View Construction Limited*[1]. Ramsbury Properties Limited is a company in which the claimant is a shareholder; as he has admitted in his witness statement and in cross examination. In that case, it was accepted as a matter of fact, that Ramsbury's properties did contract with Ocean View Construction Limited for the lease of its premises at Pinneys Industrial Site for a 7 month period commencing June, 2009. In essence, whilst the article of Brian Newman was wrong to state that the claimant was the owner of Pinneys Beach Hotel in which Mexican workers were housed, it would be correct to state that the claimant is a shareholder and director of the company who owns the property which actually entered into a lease to house these very Mexican Workers. The 1st defendant states therefore that ***"[he] made no*** *statement on whether Mr. Cozier owned Pinneys Beach Hotel or not. [He] commented strictly on the issue of a government minister benefitting from a contract ahead of other Nevisians, which based* ***on Mr. Cozier's majority shareholding in Ramsbury Properties*** *Limited,* ***is entirely true."***

[11] It must be noted that sometime in 2008 the Four Seasons Hotel was severely damaged due to the passage of hurricane Omar. This hotel is a major employer in Nevis and its closure was an issue of national importance. It is apparent from the evidence that these workers were coming onto the island to work on the restoration of the resort. Mr. Cozier accepted in cross examination that the government at the time had an interest in ensuring that the resort was reopened. However, he remained adamant that ***"saying [he] owned Pinneys*** *Hotel lowers him in the estimation of the* ***public in the context that it was said."***

[12] In cross examination Mr. Cozier accepted that he was approached by a gentleman in May, 2009 about the prospect of leasing the building owned by Ramsbury Properties Limited. He states that he informed this person that the building was available and passed him on to a Mr. Carter who was also a director in Ramsbury Properties Limited. A contract was signed on 18th June, 2009. The purpose of this lease was to house Mexican workers employed on the reconstruction efforts of the Four Seasons Resort in Nevis.

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[1] NEVHCV2009/0111

[13] These are essentially the facts upon which this claim is based.

The law and its application

[14] There are a number of issues for consideration in this case of defamation. The first is whether the words complained of are capable of being defamatory and secondly, whether these words were in fact published by the 1st defendant. Mr. Brantley readily accepts that he published the second article which the claimant finds offensive but denies that he is in anyway responsible for publishing the words of Mr. Brian Newman. The 3rd issue therefore is whether Mr. Brantley's article amounts to fair comment if the court so finds that his words are capable of being defamatory. He also relies on the defence of justification given the findings of Redhead J in the case of *Ramsbury Properties Limited v. Ocean View Construction Limited*.

Are the Words Capable of Being Defamatory?

[15] The test for whether words are capable of being defamatory was laid out in the case of *Skuse v Granada Television Limited*[2] where Lord Bingham noted that a ***"statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally."*** In that case Lord Bingham discouraged the use of too literal an approach in interpreting the words published. In the case of *Lewis et al v. Daily Telegraph*[3], Lord Reid noted that the determination to be made is not one of ***"construction in the legal sense"*** but rather what the words would mean to the ordinary and reasonable man. I would only add that his must be considered in light of the general context within which the statement was made. The characteristics of the reasonable man are described by Lord Bingham in *Skuse v. Granada Television Limited* in the following manner:

> ***"****The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he*

[2] [1996] EMLR 278
[3] [1963] 2 All ER 151

*must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.**"***

[16] I refer also to the decision of Lord Morris in the case of *Jones v. Skelton*[4] where he states that ***"[i]n deciding whether words are capable of conveying a defamatory meaning the court will*** *reject those meanings which can only emerge as the product of some strained or forced or utterly* ***unreasonable interpretation."*** Insofar as it relates to the specific meaning ascribed to the publications in the claimant's statement of claim, counsel for the claimant refers the court to the case of *Abraham Mansoor et al v. Grenville Radio Limited et al*[5] where Blenman J (as she was at the time) stated that ***"there is no dispute that a statement is defamatory if it imputes dishonesty to a person in the context of his trade, business or profession."***

[17] These are the tests to be applied in determining whether the words complained of are capable of being defamatory. If they are so capable, the court must consider whether they were in fact defamatory, given the particular circumstances of the case and giving due regard to the defences of justification and fair comment raised. In light of this, I have little difficulty in finding that the initial article published by Brian Newman is capable of being defamatory. It speaks to serious insider trading, the type for which sent Martha Stewart to prison. He also goes as far as using the term RAPE insinuating not necessarily the crime of rape, as submitted by the claimant, but rather the type of corruption which would undermine good governance. A reasonable person would not have to be avid for scandal in order to find that these words would lower the claimant in the estimation of right thinking members of society. However, the question for determination is whether the 1st defendant ought to be held liable for the publication of these comments by Mr. Newman.

Has the 1st ***Defendant Republished Mr. Newman's Comments****?*

[18] Counsel for the claimant refers to the case of ***Steel et al v. McDonald's Corporation et al***[6] where Pill LJ approved of the test of the trial judge where he stated that ***"as a matter of law, any person*** *who causes or procures or authorizes or concurs in or approves the publication of a libel is*

[4] [1963] UKPC 29
[5] ANUHCV2004/0408
[6] [1999] ECWA Civ 1114

*liable for its publication as a person who physically ha**nds it or sends it off to another."*** Pill LJ went on in that judgment to refer to the words of Isaacs J where he clarifies what is meant by approval of the publication. Approval in that context does not mean that the defendant ***"merely** approves of the publication, in the sense of regarding the publication as a desirable event, but requires the defendant to have sanctioned the publication so that he or she is shown to **have acted with the intention that publication should occur."*** In reliance on this authority, counsel for the claimant makes the following submissions:

(a) The 1st Defendant posted the words he authored under the same caption as the words of Brian Newman; and

(b) The 1st defendant referred consistently and with approval in the words that he authored to the words of Brian Newman.

[19] In light of that it is submitted that the 1st defendant has therefore published or republished the defamatory words of Brian Newman. Needless to say, counsel for the 1st defendant disagrees with this submission and, having considered them closely, so do I. Counsel referred the court to the case of *Bunt v. Tilley*[7] where the following was stated by Eady J:

> ***"to impose legal responsibility upon anyone under the common law for publication of** words it is essential to demonstrate a degree of awareness or at least an assumption of general responsibility, such as has long been recognized in the context of editorial **responsibility … for a person to be held responsible, there must be knowing** involvement in the process of publication of the relevant words. It is not enough that a person merely **plays a passive instrumental role in the process."***

[20] Counsel for the 1st defendant therefore argues that the claimant has not proven republication as a matter of law and that the 1st defendant states that he did not deliberately publish these words and played a passive role in any such publication. For my part, I am an in agreement with the submission of counsel for the 1st defendant. To my mind the test laid out in the case of *Steel v. **McDonald's*** has not been met. In fact the court of appeal was careful to point out that the mere

[7] [2006] 3 All ER 336

approval "*in the sense of regarding the publication as a desirable event*" is insufficient to make a third party liable for comments initially published by another individual. What the claimant must prove is that the 1st defendant sanctioned the publication to the extent that he ***"is shown to have*** *acted with the intention that publication should occur.*" What the evidence suggests to me was that subsequent to the publication of Brian Newman a conversation ensued regarding the issue of the extent to which public officers are entitled to compete for work in their private business affairs whilst serving as members of the government. The claimant responded to a comment from one "Denny" and expressed certain views regarding this issue. I do not find, on the basis of the facts that the 1st defendant's actions prove an intention that the publication of Brian Newman's comments should occur. I agree with the 1st defendant's reliance on the case of *Bunt v. Tilley* where it states that what is required is that there must be *a degree of awareness or at least an assumption of general responsibility,* for the actual publication.

[21] Perhaps some assistance on the manner in which this principle is to be applied can be found in the case of *Abraham Mansoor et al v. Grenville Radio Limited et al* which has been referred to by the claimant. In that case Blenman J came to consider liability for a statement made by an anonymous caller on a radio program. She stated that "*the managing director, the editor, the broadcaster, the host are all liable for any defamatory remarks that are published**."*** To my mind, the distinction would be that each of the defendants referred to by Blenman J would have some proprietary and editorial control over what is published during the course of the broadcast. This falls in line with the level of editorial control referenced by Eady J in *Bunt v. Tilley.* I am of the view that the circumstances of the present case are distinguishable in that the 1st defendant has no editorial control of the blog and there is nothing in the facts of this case which draws me to the conclusion that his actions are on par with such responsibility analogous to that which was expressed by Blenman J. He is not the host but was merely a participant in a discussion and I would not find that he can be held responsible for what Brian Newman had to say in reference to the claimant.

[22] Counsel for the claimant argued very forcefully that the mere caption of the article of Brian Newman is libelous and the mere fact that the 1st defendant's comments would naturally bear the same caption is proof of such an intention and the degree of responsibility required for him to be held

liable for Mr. Newman's comment. The caption reads *Re: Mexican Workers in Nevis Staying at* ***Minister Dwight Cozier's Hotel****.* Indeed, the facts of the case do not prove that the claimant owns a hotel in which any Mexican workers were housed. The claimant in cross examination insisted that merely saying he owns Pinney's Hotel lowers him in the estimation of right thinking persons in the society. Therefore, according to counsel, this is sufficient to prove that the 1st defendant published the words of Brian Newman.

[23] I do not agree with that submission for a number of reasons. Firstly, the evidence suggests that while the claimant did not own Pinney's Hotel, he did accept that the Mexican workers were housed in a building owned by a company in which he was a majority shareholder and that a contract was being negotiated between May and June of 2009 for that very purpose. I find it difficult to accept that the mere caption in and of itself constitutes a libel in these circumstances. I will address this issue in more detail later on in this judgment when I consider the 1st defendant's defence of justification. It would suffice however to say that the mere caption in and of itself does not render the 1st defendant liable for the comments of Brian Newman as these words, in isolation, are not defamatory.

[24] Secondly, there is nothing in the evidence to satisfy me that merely commenting on an existing blog must, of necessity, mean that an individual is to be deemed to have published or republished libelous material contained on that blog. Take for example the case of "Denny" who also commented on the blog. He stated that ***"****if Dwight Cozier has a hotel-****which I didn't know about****-then he has the right to compete to host clients, regardless of their purpose for being on* ***island, and who brought them."*** I would find it difficult to conclude in these circumstances that Denny must be held to have published or re-published the words of Brian Newman so as to be liable for defamation merely because these comments would have been prefaced by the caption *Re: Mexican Workers in Nevis Staying* ***and Minister Dwight Cozier's Hotel****.* As I understand it, anyone who commented on the general discussion which ensued would have had this caption attached to his contribution. That in and of itself does not make one liable for the words of someone else. In the circumstances I do not agree with the first proposition put forward by the claimant.

[25] The claimant argues secondly that the 1st defendant referred consistently (and with approval) to the words of Brian Newman. I do not find that to be the case. When the court determines that Mr.

Newman's comments are capable of being libelous it comes to that conclusion by taking the content of the article in its totality. That does not mean that certain aspects of Mr. Newman's post may not be subject to further discussion by members of the public. That was precisely what Denny did in his contribution which prompted Mr. Brantley's response. Insofar as it relates to Mr. Newman's post, the 1st defendant stated ***"so when the person positing this talks of all the*** *workers being accommodated at one hotel/guest house in which a Minister is involved, it* ***looks very much like more of the same."*** I find it difficult to accept that this amounts to the level of approval and assumption of general responsibility which is required to make the 1st defendant guilty of publishing the words of Brian Newman. He commented on a specific aspect and this would have been the basis of his contribution to the discussions which ensued. No doubt, the court must assess Mr. Brantley's own comments and hold him responsible for them. But I do not agree that the evidence is sufficient to make him responsible for the comments of Brian Newman. It would be wrong in law to suggest that a person commenting on a blog must be taken to have published libelous material of another if he merely comments on the general discussion or expresses agreement with certain aspects of the article published. That would be a stretch of the test laid down in the authorities cited by the claimant. I therefore do not find that the 1st defendant is to be held liable for republishing the words of Brian Newman.

The 1st ***Defendant's Publication***

[26] I turn now to consider Mr. Brantley's own comments to determine firstly whether they are capable of being defamatory. I have repeated the comments of Mr. Brantley earlier in this judgment and will not do so now.

[27] I wish to first consider the specific meanings ascribed to the comments by the claimant in his statement of claim. These were highlighted at paragraph 6 of this judgment. Firstly, I do not find that there is any insinuation in Mr. Brantley's comments that the claimant is the owner of Pinneys Beach Hotel and even if I did so find, I am not of the view that this would be defamatory in any way. Further, given my determination that the 1st defendant did not publish the comments of Brian Newman, I am of the view that there is nothing in Mr. Brantley's article which states that the claimant is guilty of insider trading and rape or that he should be jailed. Those were not his comments; neither did he appear to sanction them in anyway. I also note that the claimant asserts

in his statement of claim that the words complained of meant that he defrauded the treasury of thousands of dollars which is being paid to house Mexican workers as the owner of Pinneys Beach Hotel. He goes on to plead that the words mean that the he defrauded the treasury of monies dishonestly paid to him in order to accommodate these workers at the Pinneys Beach Hotel. There is nothing in the 1st defendant's comment which speaks to monies being paid out of the treasury. Nothing in the evidence satisfies me that there is any insinuation on the part of the 1st defendant that the accommodation for the Mexican workers was paid for by the government and out of government funds. The comment related to the issue of whether government officials at that level should be allowed to compete with private business owners for work of that nature given that they have prior knowledge of certain facts ahead of private businesses. I therefore find that these meanings cannot be ascribed to the comments published by Mr. Brantley.

[28] The claimant also asserts that the words complained of would also mean that he, in his dual role as Minister of Government and owner of Pinneys Beach hotel, is dishonestly and fraudulently competing with the Nevisian business community. In relation to this specific contention it is worth repeating the 1st defendant's comments where he states that "…*when the person posting this talks of all the workers being accommodated at one hotel/guest house in which a Minister is* ***involved, it looks very much like more of the same. It's obvious that*** *the Cabinet and therefore the Ministers of Government will know what business is coming to Nevis before the other business people in Nevis. They will know this because those coming in must interact with the government for approvals, permits etc. If Government Ministers are intent on benefitting themselves, then they do their deals even before legitimate business people in Nevis k****now what's happening. This is wrong and would be unacceptable in most places.***

[29] The 1st defendant insists that these are words of general comment and not specifically relating to the claimant. It was a response to Denny's remarks that he sees nothing wrong with a minister competing for such work. The argument on behalf of the claimant however, is that his name was specifically mentioned in the caption to this comment and that this thread carried on from the comments of Brian Newman. Therefore, these words would draw the reasonable man to the conclusion that the claimant dishonestly and fraudulently competes with the Nevis business community for work.

[30] I am not at all sure that the ordinary and reasonable man, who is not avid for scandal, would inject dishonesty and fraudulence into the meaning of Mr. Brantley's comments. I accept that this fictional character can read between the lines and draw a reasonable conclusion given the context of the society in which the words are published. However, the comments appear to me to be general comments and in some instances hypothetical. Following on from the question of whether Mr. Cozier would have a right to compete as any other businessman, the 1st defendant makes specific reference to government printing and goes on to speak in general of the fact that government ministers would have prior knowledge of ***"who is coming and what their needs are".*** In that context he puts forward the hypothetical scenario that if government ministers do intend to benefit themselves, then they do their deals before anyone else. I am not at all persuaded that the reasonable man will conclude that the claimant is guilty of dishonestly and fraudulently competing with other businesses on the basis of these general comments.

[31] I accept that the 1st defendant also referred to all government printing going to one company. The evidence is that the claimant is the owner of a printing company. The 1st defendant states in his evidence that there were only two such companies in Nevis and he is aware that the other company got no printing business during the period in question. I note that both in his statement of claim and written submissions, the claimant did not seem to take much issue with this specific comment. In any event, I do not agree that the reasonable man would interpret this comment to mean that the claimant was fraudulent or dishonest in his dealings.

[32] In general the 1st defendant's post, taken in its totality, appears to express a general opinion on the question of whether or not government ministers should be allowed to compete with private businesses for work whilst serving in that capacity and I am of the view that the reasonable man would likely interpret these comments in that manner. I would therefore not find these words to be capable of being defamatory in the manner put forward by the claimant. Even if I had found them to be so capable I would not have found them to be libelous in the general context in which the discussion was taking place. I will nonetheless consider the defences of justification and fair comment relied on by the defendant, as I am of the view that even if I were to have found otherwise, I would not have found the 1st defendant liable in the circumstances of this case.

Justification

[33] In his initial defence, the 1st defendant did not plead justification. He later sought leave to amend his defence after a judgment was delivered by Redhead J in the case of *Ramsbury Properties v. Ocean View*. The 1st defendant was granted the leave which he sought by the court of appeal. In his amended defence he pleads justification and states the following in his witness statement:

> 10. *In late 2011, a decision of Mr. Justice Redhead dated 13th October, 2011 in claim No. NEVHCV2009/0111 Ramsbury Properties Limited v. Ocean View Construction* ***Limited … came to my attention. I realized from the decision that the facts of that*** *case were relevant to issues to be determined in the case at bar. The learned judge pointed out that Mr. Cozier in his witness statement in the Ramsbury Properties Case stated that he was the majority shareholder in the claimant company Ramsbury Properties Limited. In that case, Ramsbury Properties Limited sought a declaration that its lease agreement entered into with Ocean View Construction Limited was valid, specific performance and damages for breach of contract in addition to specific performance, inter alia. The statement of claim in the Ramsbury Properties Case outlines that the lease agreement in question was for Ocean View Construction Limited to lease the premises belonging to Ramsbury Properties Limited in Pinneys Industrial Site for 7 months commencing 20th June, 2009.*
>
> 11. *Justice Redhead found as a fact that Mr. Dwight Cozier negotiated on behalf of Pinneys Beach Hotel to provide accommodation for the Mexican workers in the Ramsbury Properties case. The learned judge also found as a fact that Mr. Cozier offered premises owned by his company Ramsbury Properties Limited as an alternative and that Mr. Cozier did negotiate a lease for the accommodation of the Mexican workers at a building owned by his company Ramsbury Properties Limited.* ***In fact, in the Ramsbury Properties Case, the contract for Mr. Cozier's company to*** *provide accommodation for the Mexican workers was the basis upon which Ramsbury Properties Limited initiated its claim against Ocean View Construction Limited.*

[34] Mr. Brantley goes on to refer to paragraphs 26 and 44 of Redhead J's judgment in which it was mentioned that Mr. Cozier stated in his witness statement that he is a minister of government and a majority shareholder in Ramsbury properties limited. Mr. Andrew Carter was employed as Managing Director and Financial Controller of Ramsbury Properties Limited. Mr. Carter was also Managing Director of Pinneys Beach Hotel. Redhead J found that there was a strong connection between Ramsbury Properties and Pinneys Beach Hotel. Mr. Brantley seeks to rely on the findings of that case to justify the comments made about the housing of Mexican Workers.

[35] However, counsel for the claimant refers the court to section 90 of the Evidence Act which states as follows:

> *(1) Subject to subsection (2) and sections 91 and 92, evidence of a decision in legal or administrative proceedings is not admissible to prove the existence of a fact that was in issue in the legal or administrative proceedings.*
>
> *(2) Where evidence of a decision referred to in subsection (1) is relevant, otherwise than as mentioned in that subsection, it shall not be used for the purpose mentioned in that subsection.*

[36] Counsel for the claimant therefore argues that "*section 90 literally excludes or proscribes evidence of judgments and convictions* ***and is not ambiguous in its purpose in that regard."*** I do not agree with counsel's interpretation of that section. The section seeks to exclude evidence which is sought to be introduced to prove the existence of a fact which was in issue in the legal proceedings in which the judgment was entered. Apart from the exceptions contained in section 91 of that Act, the only prohibition placed on relying on a judgment is contained within section 90 itself and subsection (2) states that the judgment shall not be used for the purpose mentioned in subsection (1). That is limited to proof of an existence of a fact which was in issue at the trial in which the judgment was entered and not a carte blanche exclusion of any reliance on evidence of a judgment or conviction.

[37] To my mind, this court does not have to give consideration to facts which were in issue in the Ramsbury case to find sufficient evidence to accept the 1st defendant's pleading of justification.

The claimant has accepted, even in the current proceedings, that he is the majority shareholder in Ramsbury properties. He states that it is a family company of which he is a shareholder. He accepted that he was contacted by a gentleman in connection with leasing a building owned by Ramsbury properties to house Mexican workers. He goes on in the evidence in this case to state that Mr. Andrew Carter was the managing director of Ramsbury Properties and that he did pass on this gentleman to have further discussions with a view to leasing a building owned by Ramsbury Properties. He goes further to state that a contract was signed on 18th June, 2009 for the purpose of housing Mexican workers. This was a full 6 months prior to the filing of this claim. Insofar as Redhead J referred to Andrew Carter as being involved with Pinneys Beach Hotel as well as Ramsbury Properties, that does not appear to have been a fact in issue. Also there appears to me to be no controversy in saying that the Ramsbury case was brought for the specific purpose of enforcing a contract for the housing of Mexican workers in a building owned by that company of which the claimant is a shareholder. Mr. Cozier has admitted that much in his own evidence before this court.

[38] These facts are important as the claimant takes grave issue with the fact that the comments have referred to him as benefiting from a contract to house Mexican workers at Pinneys Beach Hotel when in fact he does not own Pinneys Beach Hotel. This seems to have been the most offensive of all the comments made on this blog. During oral arguments counsel for the claimant submitted that there is a distinction in that the workers were housed in a building and not a hotel owned by Mr. Cozier and, in that regard, the 1st defendant cannot rely on the defence of justification. A further argument is made that, given that the contract was signed after the statement was published, the defendant cannot rely on justification as there was no contract to house Mexican workers at the time of publication.

[39] Counsel for the 1st defendant, on the other hand, refers the court to the case of *Chase v. News Group Newspapers*[8] where Brooke J noted that ***"the defendant does not have to prove that*** *every word he/she published was true. He/she has to establish the essential or substantial truth of the sting of the libel. To prove the truth of some lesser defamatory meaning does* ***not provide a complete defence".*** In that case the judge went on to state that ***"if a libel accuses***

[8] [2002] ECWA Civ 1772

a man of being a scoundrel, the particulars of justification can include facts which show ***him to be a scoundrel, whether they occurred before or after the libel."*** Essentially, the argument is that there is substantial truth in the words the claimant claims to find offensive as it relates to Mexican workers being housed in a building owned by him. That seems to me to be the substance of his pleadings, evidence and submissions. I agree with that submission as put forward by counsel for the 1st defendant.

[40] To my mind, the defence of justification is not one which seeks to prove that every minute detail of the comment is true. It is designed to ensure that an individual does not claim to be defamed in relation to a reputation which he is not entitled to have. In other words, the court must observe the substance of the alleged libel in order to determine whether the defendant can rely on this defence. I find it difficult to accept that the claimant can admit to being a majority shareholder in a company which did house the Mexican workers, admit to having a conversation with a gentlemen in that regard in May of 2009, his company has in fact sued in a court of law for the benefit of that contract, he gave evidence in those proceedings, some of which were uncontroverted and not in issue, and yet he seeks to move the court to find that he is defamed by the mere reference of him owning Pinneys Beach Hotel and having housed Mexican workers there.

[41] The sting of this comment has nothing to do with Pinneys Beach Hotel and more so to do with the fact that the claimant was a minister in the government and a contract was granted for the housing of Mexican workers in a property owned by his company. If, to his mind, there is nothing wrong with Ramsbury Properties Limited housing the Mexican workers in these circumstances, I can find nothing which makes the mention of Pinneys Beach Hotel more libelous in any way.

[42] The 1st defendant would have therefore succeeded in his claim that the words complained of regarding the housing of Mexican workers are in fact justified. I also find that in general this appears to be the "sting" of the 1st defendant's comments and I would have found in his favour in that regard had I found the words were capable of being defamatory.

Fair Comment

[43] The 1st defendant then relies on the defence of fair comment. Counsel refers the court to the case of *London Artists v. Litter*[9] where Lord Denning states that ***"whenever a matter is such as to*** *affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to mak****e a fair comment."*** Counsel goes on to refer to the case of *Phillip Abbot v. Aziz Hadeed*[10] in support of the proposition that the test for determining whether a comment is fair is an objective one and whether the opinion, however exaggerated, obstinate, or prejudiced was honestly held by the person expressing it.

[44] Counsel for the claimant on the other hand argues firstly, that the defendant cannot rely on both justification and fair comment in his defence. Counsel goes on to argue that a defence of fair comment on a matter of public interest accepts that the statements complained of are defamatory, or untrue, but are protected by fair comment in the public interest. On the other hand a defence of justification means that the statements made are true. Therefore the defendant cannot rely on both defences. I do not agree with that submission. As Blenman JA noted when this very case went up to the appellate court on an interlocutory issue, ***"[a]*** *defence of justification is separate and distinct from that of fair comment."* There is no bar to the 1st defendant relying on both defences. If indeed the court were to have found that the words were not justified it may very well be open to accept the defence of fair comment. It would depend on the circumstances of the case and I would not have rejected his defence of fair comment merely on the fact that he has also pleaded justification.

[45] Counsel for the claimant argues further that the defence of fair comment must be based on facts truly stated, recognizable as comment and not fact; and must be on a matter of public interest. She refers the court to the case of *Joyce v. Clyde Trade Publishing Co.*[11] Where Kennedy J noted that one cannot invent untrue facts about a person and then comment upon them. She refers the

[9] [1969] 2 QB 375
[10] [2013] ECSCJ No. 12
[11] [1904] 2 KB 292

court to the case of *Abraham Mansoor et al v. Grenville Radio Limited et al*[12] where Blenman J stated that ***"it is trite law that memb****ers of the public are entitled to comment fairly and freely on matters of public interest, they are also allowed to criticize acts of public officials. Ho****wever, their comments must be on facts that exist and should be made without malice."*** Blenman J goes on to state the following at paragraph 102 of her judgment:

> ***"In order to succeed in the defence of fair comment the defendants must show that*** *the words are comment and not statements of fact. An inference of fact from other facts referred to may amount to a comment. They must also show that there is a basis for the comment, contained or referred to in the matter complained of. The comment* ***must satisfy the test of being "objectively fair" in the sense that an honest fair****-minded person could hold that view. Finally the defendants must show that he 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. If the claimants can show that the comment was actuated by malice they will* ***defeat the plea."***

[46] The claimant therefore argues that the 1st defendant's comments are not based on facts truly stated and as such cannot be recognizable as fair comment. Counsel refers to 8 occasions on which the words complained of are matters of fact and not comment. The first 4 relate to the words of Brian Newman. Having found that the 1st defendant is not liable for these comments I will not now consider them. The remaining for are as follows:

(a) ***"****When all government printing goes to a printing company owned by a government* ***minister it's a little hard to accept that others can compete."***

(b) ***"So when the person posting this talks of all the workers being accommodated at one*** *hotel/guest house in which a Minister is involved, it looks very much like more of the* ***same. It's obvious that the Cabinet and therefore the Ministers of Government will kn****ow what business is coming to Nevis before the other business people in Nevis. They will*

[12] ANUHCV2004/0408

know this because those coming in must interact with the government for approvals, ***permits etc."***

(c) ***"If Government Ministers are intent on benefitting themselves, then t****hey do their deals* ***even before legitimate business people in Nevis know what's happening."***

(d) *Those NRP Ministers look out for themselves first and everybody else comes after.*

[47] The claimant argues that these are all statements of fact and not comment. As a result, the defence of fair comment is not available to the 1st defendant. However, it has been recognized that there may at times be some difficulty in distinguishing fact from comment in cases such as the present. Lord Porter, in the case of *Kemsley v Foot*[13] cited with approval the remarks contained in ODGERS ON LIBEL AND SLANDER[14] where it was stated that ***"[s]****ometimes, however, it is* ***difficult to distinguish an allegation of fact from an expression of opinion".*** Many people tend to express their opinions as matters of fact; especially when they are passionate and fortified in their views. That does not mean that the statement should be viewed as a fact and certainly does not mean that such persons are not entitled to forcefully express their opinion in a free and democratic society. One must take a closer look at the article in its totality. The authors of Odgers On Libel and Slander go on to make the following statement:

It often depends on what is stated in the rest of the article. If the defendant accurately states what some public man has ***really done, and then asserts that 'such conduct is disgraceful,'*** *this is* ***merely the expression of his opinion, his comment on the plaintiff****'s conduct. So, if without setting it out, he identifies the conduct on which he comments by a clear reference. In either case, the defendant enables his readers to judge for themselves how far his opinion is well founded. But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what the conduct was, this is an allegation of fact for which there is no defence but privilege or truth. The same considerations apply where a defendant has drawn from certain facts an inference derogatory to the plaintiff. If he states that bare inference without the facts on which it*

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[13] [1952] AC 345
[14] (5th ed., 1911) at p.203

*is based, such inference will be treated as an allegation of fact. But if he sets out the facts correctly, and then gives his inference, stating it as his inference from those facts, such inference will as a rule, be deem a comment. But even in this case the writer [speaker] must be careful to state the inference as an inference and not to assert it as a new and independent fact; otherwise, his inference will become something more than a comment**, and he may be driven to justify it as an allegation of fact."***

[48] The starting point therefore is to consider the words expressly used by the 1st defendant, and in particular those words which the claimant has highlighted in response to his reliance on the defence of fair comment. I consider them as follows:

(a) As it relates to the words outlined in paragraph 46(a) of this judgment I agree with the claimant where it is argued that, at least some of that statement, is a fact and not a comment. The 1st defendant, in his evidence, acknowledged that the claimant is the owner and operator of a number of media companies. He acknowledges that the claimant was in the business of printing and states that as far as he was aware, the claimant was the owner of one of only two printing companies in Nevis. He was adamant that the other printing company did not get any of the government's printing business during the time in which the claimant was in office. The claimant on the other hand was somewhat vague in his response as to whether one of his companies in particular did printing for the government during his time in office. On balance however, I find that the evidence is not sufficient to conclude that this fact has in fact been proven to be true. It would seem to me on balance that the claimant is a majority owner of a company which may have done printing for the government but it is not established that all printing was done with this company;

(b) Regarding the content of paragraph 46(b) the 1st defendant first states that ***"[s**o when the person posting this talks of all the workers being accommodated at one hotel/guest house in which a Minister is involved, it looks very much like more of the same."*** I find this to be a fact insofar as it states that this was a comment made by Mr. Newman. It refers to workers being accommodated at one hotel/guest house in which a minister is involved. Whilst the claimant argues that this fact was not in existence at the time the comment was made I do

not find this to be fatal to the 1st defendant's submissions in that regard. In any event, the evidence suggests that even at that time, the claimant was involved, in some way, in negotiations for the Mexican workers to be housed at premises owned by his company. The 1st defendant goes on to state that when such statements are made "*it looks very much like more of the same.*" This appears to me to be a comment and an expression of the claimant's general opinion regarding the manner in which such issues are addressed.

(c) He goes on to state that ***"[i]t's obvious that the Cabinet and therefore the Ministers of*** *Government will know what business is coming to Nevis before the other business people in Nevis. They will know this because those coming in must interact with the government for approvals, permits etc."* I agree with the claimant where it is argued that this is a fact. However, I find on the balance of probabilities that it is a fact which is true. In the context of the facts in general, the claimant accepts that the closure of the 4 Seasons hotel was of significant concern to the government at the time. It would not be controversial in any way to accept that the government would generally have knowledge of persons coming in to work on the resort and that there would be a need for various approvals to facilitate that process. I am of the view that the 1st defendant would have been entitled to reference this fact and express his opinion on it.

(d) The 1st defendant then goes on to state that ***"[if]*** *Government Ministers are intent on benefitting themselves, then they do their deals even before legitimate business people* ***in Nevis know what's happening."*** I do not agree with the claimant where it is argued that his is a fact. To my mind this is a hypothetical and an expression of an opinion as to what would obtain in the event that government ministers intend on benefiting themselves.

(e) Finally, the 1st defendant states that ***"[t]****hose NRP Ministers look out for themselves first and everybody else comes after."* I am not of the view that this is a fact. To my mind, and in the general context of political commentary, I find this to be an opinion expressed on the basis of the facts referred to.

[49] The question for consideration is whether the 1st defendant's comments were based on facts truly stated. It would have been for him to prove that there was truth to the facts on which his comments

were based. In that regard, I find that there was truth to the fact that the claimant was the owner of a property in which the Mexican workers were housed and on that basis the claimant would have been entitled to his opinion on the question of whether ministers of government ought to compete for such investments given their position. It is not that the court sanctions Mr. Brantley's views, but I merely state that there are facts upon which he was entitled to maintain that view as expressed in his contribution to the general discussion. These were facts in the public domain, not merely because of the discussion on this blog, but also because of the importance of ensuring that this hotel was reopened. I also find that there is nothing in the evidence to satisfy me that the 1st defendant was guilty of the level of malice which would have precluded him from relying on this defence.

[50] However, the 1st defendant also stated that all printing business of the government goes to one company in Nevis. Whilst I concluded that the claimant's response to cross examination on that issue was somewhat vague it would have been for the 1st defendant to prove that fact. To rely on the defence on fair comment the facts on which the comment was made must be proven and in light of this I would have found that the 1st defendant would have failed in his defence of fair comment as it relates to that specific statement if I had found those words to be defamatory.

Conclusions

[51] In conclusion I find that the words of Brian Newman are capable of being defamatory but liability cannot be attributed to the 1st defendant for publishing or republishing these words. Secondly, I do not find the words written by the 1st defendant to be defamatory and would dismiss the claim on that basis. However, if I had found otherwise, I would have accepted the defence of justification for the reasons I have outlined in this judgment. His defence of fair comment would have however failed as it relates to the particular comment relating to government printing (I however, reinforce my finding that this statement is not defamatory).

[52] In the circumstances I make the following orders:

(a) The claim is dismissed with costs to the 1st defendant;

(b) The 1st defendant is entitled to have his costs assessed if not agreed, by filing an application to this court pursuant to rule 65.12 within 28 days from the date of delivery of this judgment.

Ermin Moise
High Court Judge

By the Court

Registrar