

IN THE EASTERN CARIBBEAN SUPREME COURT  
SUPREME COURT  
HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CLAIM NO. DOMHCV2011/0388

BETWEEN

ROOSEVELT SKERRIT

Claimant

and

1. THOMAS FONTAINE
2. WEST INDIES COMMUNICATION ENTERPRISES LTD.

Defendants

and

ANTHONY W ASTAPHAN

Ancillary Defendant

Appearances:

Mr. Alick Lawrence Q.C with him Ms. V. Auguste of Counsel for the Claimant  
Mr. Gildon Richards of Counsel for the Defendants

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2013: 11<sup>th</sup> April;  
12<sup>th</sup> April  
25<sup>th</sup> April  
2014: 3<sup>rd</sup>, 28<sup>th</sup> March

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DECISION

- [1] TAYLOR-ALEXANDER, M: In the substantive action, the claimant who is the Prime Minister, Minister of Finance, Foreign Affairs and the Minister with responsibility for the Economic Citizenship Program in the Commonwealth of

Dominica, sues the defendants for damages including aggravated damages for libel, for defamatory words published of and concerning him in various publications made during the period 17<sup>th</sup> October 2011 – 2<sup>nd</sup> December 2011.

- [2] This application is filed by the defendants who seek an amendment of their defence filed on the 19<sup>th</sup> March 2012. The case management conference having been fixed, the rules dictate that such an amendment can only be made with leave of the court. An ancillary and related application was also brought by the claimant for leave, for their additional submissions, filed after the date for which time had been granted, to be deemed properly filed. Both applications are opposed.

### Procedural History

- [3] The claim form and statement of claim were filed on the 29<sup>th</sup> of December 2011 and an amended claim form on the 17<sup>th</sup> January 2012. The amended claim form left the original claim largely unaltered.
- [4] A defence, counterclaim and ancillary claim were filed on the 19<sup>th</sup> March 2012 denying the publication of words that are defamatory; alleging that in so far as the words were defamatory the content had already existed in the public domain; that the publication was made in good faith; was not actuated by malice and was fair and justified commentary and was protected by qualified privilege. The defence also challenged the claimant's capacity to bring the claim. The first defendant also counterclaimed alleging the publication of other defamatory words of and concerning him<sup>1</sup> made on the 2<sup>nd</sup> December 2011.
- [5] The ancillary claim filed is against Anthony W Astaphan alleging that he made defamatory imputations and facilitated the publication of the words defamatory of the claimant for which the defendants were seeking an indemnity.

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<sup>1</sup> Although there are three defendants the particular defendant to whom the defamatory words related was not pleaded.

- [6] A reply and defence to counterclaim was filed on the 3<sup>rd</sup> of April 2012, the claimant alleging therein that the allegations made by the defendants and the reference to personal allegations of criminality were without a bona fide belief in their truth. The pleadings denied that there is any public interest in the dissemination of allegations of criminality when presented as true and without official inquiry and consequently such allegations were not protected by qualified privilege. The claimant denied the other allegations of the defence and the counterclaim, alleging in relation to the counterclaim that any statements made by the claimant was made in an address and as a natural consequence of the allegations made by the first defendant.
- [7] An amended reply and defence to counterclaim was filed on the 4<sup>th</sup> April 2012, the effect of which was to effect grammatical and typographical changes to the original pleading.
- [8] A defence to the ancillary claim was filed on the 20<sup>th</sup> April 2012, which in essence questioned the sustainability of the counterclaim.
- [9] On the 16<sup>th</sup> of May 2012, the matter came on for case management conference. That was in accordance with part 27.3 (3) of CPR 2000. The matter was adjourned ostensibly to allow both Counsel Gildon Richards and Alick Lawrence Q.C who appeared to have been recently retained, to put themselves on the record.
- [10] Further case management conference was held on the 20<sup>th</sup> June 2012, at which time it appears that Counsel G. Richards was granted time up until the 30<sup>th</sup> June 2012, to file and serve an application for leave to file an amended defence and counterclaim, pursuant to the CPR 2000 rule 20.1 and for the claimant to respond if necessary by the 13<sup>th</sup> July 2013.

[11] On 2<sup>nd</sup> July 2012 the application was formalised, alleging that a circumstance or circumstances which became known to the defendant after the scheduled first case management conference made the amendments necessary.

[12] In substance the application alleges that the defendants' previous counsel now deceased incompetently and inadequately filed the defence, omitting fundamental rudiments of pleadings in defamation. It was only when subsequent counsel was retained the defendants allege that they became aware of the deficiencies compromising their defence

[13] An amended defence, counterclaim and ancillary claim was also filed on the 2<sup>nd</sup> July 2013 with the amended parts highlighted in red, apparently oblivious to Practice Direction No. 5 of 2011 which directs the appropriate protocol for bringing the proposed changes to the court's attention.

[14] On the 16<sup>th</sup> July 2012 outline submissions in opposition to the application was filed and on the 24<sup>th</sup> September 2012 the claimant filed a notice wholly opposing the application for amendment. On the 24<sup>th</sup> September 2012 the claimant and ancillary defendant filed further submissions of the claimant in opposition to the request for the amendment.

[15] The applications raise two issues for determination:—

- (i) The status of the revised submissions; and
- (ii) Whether the court's discretion should be exercised in favour of an amendment to the defence, counterclaim and ancillary claim.

#### **Late filing of the claimant's submissions and further submissions**

[16] Both parties are guilty for not adhering to deadlines issued by the court. The application of the defendants ordered to be filed on the 30<sup>th</sup> June 2012 was filed

on the 2<sup>nd</sup> of July 2012. The claimant also did not meet its appointed deadline for the filing of submissions by the 13<sup>th</sup> July 2012. The claimant filed “*amended submissions*” on the 26<sup>th</sup> September 2012. (I have termed the “amended submissions” as “further submissions”, as the CPR only contemplates pleadings as being capable of amendment). The defendants at the hearing of the application took issue with the late filing of the submissions and with the filing of the further submissions.

[17] Unlike other provisions of the CPR 2000 for instance<sup>2</sup>, there is no requirement under Part 11 for submissions to be filed in support or opposition of a written application. A party is therefore at liberty to choose whether or not to file.

[18] I am not altogether convinced that the Master’s order prevented further submissions from being filed without leave. Written submissions to my mind usually provide useful analysis on the facts and law that allows the court to focus on the important issues for determination in an application. In *Employers International and Others v Boston Life and Annuity Company Ltd* Civil Appeal No. 5 of 2007, Sir Hugh Rawlins when dealing with the question of whether the mandatory requirement to file written submissions together with an interlocutory appeal rendered the appeal a nullity explained their relevance thus:—

*“Written submissions, which are filed with an appeal, are intended to assist the court, by way of reference to the applicable principles, legal analysis and authorities, to arrive at decisions that are sound, well-reasoned, correct in law, reliable and not delivered per incuriam”.*

Although there is no such mandatory requirement under part 11, the reasoning is sound and equally applicable. In my view, unless its use is specifically provided for or prohibited by a rule or order or it is prejudicial to a defendant to allow it, submissions are always welcomed. In the event that I am wrong about the effect

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<sup>2</sup> See Order 62.10 for instance requires that written submissions are filed with an interlocutory appeal.

of the Master's order I find that the order by not specifying a sanction for not meeting the deadline falls to be determined under CPR Order 26.9 (2) and (3) which is instructive in resolving questions of non-compliance without the imposition of sanctions. It provides:—

- " (1) This rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order."*
- (2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.*
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.*
- (4) The court may make such an order on or without an application by a party."*

[19] I see no prejudice that the defendants have or will suffer by the claimant's filing of the further submissions, the submissions having been filed well before the actual hearing of the application. I therefore order that in so far the claimant is restricted in its use of the further submissions filed on the 26<sup>th</sup> September 2012, for failing to comply with the order of the Master, I waive such restriction and deem the submissions properly filed.

Should the court exercise its discretion so as to allow the amendment?

#### The Applicant/Defendant's Submissions

[20] The defendants' affidavit provides the evidence in support of the application in which the first defendant himself states that he had formally engaged other counsel (now deceased) to represent him in these proceedings, and to prepare

and file a defence on his behalf. He collaborated with his then counsel although he never attended his chambers. When the draft was prepared it was sent for his perusal and he gave certain instructions.

[21] The first defendant states that he relied on the competence and advice of his counsel. His counsel withdrew from the proceedings following its filing in March 2012. The first defendant subsequently contacted new counsel in May 2013 and met with him on the 4<sup>th</sup> June 2012. It was not until he met with his new counsel who after reviewing his case advised him of the deficiencies in his pleadings.

[22] The defendants submit that the amendments requested ought not to cause any prejudice to the claimant, they being amendments only as to form.

#### The Claimant's Submissions

[23] The claimant has set forth on a vigorous attack of the application and of the draft defence, both in substance and form, alleging that it is incurably bad; procedurally deficient and defective. In particular the claimant alleges:—

- (a) That the draft amended defence violates Part 10.5 (3) and (5) of the CPR 2000;
- (b) The defence of qualified privilege repeated throughout the defence violates the rules of pleadings; gives no particulars on which the defendant relies as giving rise to the privilege he asserts; The allegations are recycled hearsay and rumour, lacking any form of responsible journalism,
- (c) Both the defences of fair comment and justification repeated throughout the defence violates part 69.3 of CPR 2000 as it fails to particularise which words complained of are alleged to be statements of fact and the facts and matters relied on in support of the defence of truth. In any event the alleged particulars are not fact or material but mere repetition of allegations that do not address the sting of the libel contained in paragraph 5.2 of the claim;

As a consequence of those deficiencies the claimant is unable or is compromised in the presentation of its claim and is left in a state of uncertainty.

### Analysis of the Submissions and Procedure

[24] CPR Rule 20.1 is a useful starting point, as it dictates that an amendment sought after the fixture of the first case management conference, must be with leave of the court. The rule provides as follows:—

#### *“Changes to statement of case*

(1) *A statement of case may be amended once, without the court’s permission, at any time prior to the date fixed by the court for the first case management conference.*

(2) *The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.*

(3) .....

(4) .....

[25] The rule is assisted in its application by practice direction No. 5 of 2011 which provides factors to which the court must have regard when it considers an application for leave to amend. These are:—

(a) how promptly the applicant has applied to the court after becoming aware that the change was one he wished to make;(b) the prejudice to the applicant if the claim was refused; (c) the prejudice to the other party if the claim was refused; (d) whether such prejudices can be mitigated by the payment of costs and or interest; (e) whether the trial date or any likely trial date can still be met; and (f) the administration of justice.



[26] CPR 1.1 and 1.2 also provides in mandatory terms for the court to give effect to the overriding objective when it exercises any discretion given to it by the rules, so as to enable the court to deal with cases justly. Dealing justly with a case includes:—

- (a) ensuring that the parties are on equal footing;
- (b) ensuring that the case is dealt with expeditiously and fairly; and
- (c) allotting to it an appropriate share of the courts resources, while taking into account the need to allot resources to other cases.

Rule 1.2 requires the court to give effect to the overriding objective when interpreting the rules or exercising any power under them, and rule 1.3 commands the parties to assist the court in furthering the said objective.

[27] A consideration of the administration of justice must include an examination of principles of the overriding objective, and I propose to consider it together.

#### **Timing of the application**

[28] The evidence of the defendants was provided by the first defendant, the basis for the application being the deficiencies of the previously retained counsel. I do not find evidence of delay nor is there any challenge as to the timing of the application. Although the claimant suggests that the application for the amendment was not made promptly, given that the defendants had made one appearance at the case management conference with new counsel and had not sought an amendment then, I have no difficulty concluding from the evidence that the application was made promptly after the defendants retained new counsel. I also find that the matter still being at the stages of case management conference, no trial date has been fixed.

#### **Prejudice to the Defendants/Applicants**

[29] Prior to the 2011 amendment to rule 20.1 of CPR 2000, a party had to show that a requested amendment related to a change in the factual circumstances of the rule.

Sir Bryan Alleyne in *Gordon Lester Braithwaite and David Henderson v Anthony Piper* Civil Appeal No. 18 of 2002. explained the rule as follows:—

*“a change of circumstances in the context of these rules is a change in the factual circumstances, not as appears to be suggested by the Respondents, a change in the parties’ awareness or understanding of their legal rights, or of the existence of the possible defences to the claim made against them.”*

[30] Although under the new dispensation the power of the court to give permission to amend is circumscribed only to the extent that it must consider the timing of the application, non-compensable prejudice to the parties and the overriding objective, the reasoning is instructive, and in my view advises of a cautionary approach to the broad range of issues which may be raised as being circumstances of non-compensable prejudice.

[31] Importantly, a finding of non-compensable prejudice may well operate to prevent an adjudication of the amended defence, despite its substantive merits. This in my view compels me to undertake a rigorous scrutiny of the evidence and submissions of the parties in relation to the element of prejudice and to examine closely the claim and defence on their merits. Similarly the allegation of prejudice should be detailed in sufficient particularity to allow for a determination of real prejudice.

[32] The defendant’s allegation is that he has been prejudice by the incompetence of his counsel to have understood the requirements of the law and the rules as to the manner in which cases in defamation ought properly to be pleaded.

[33] Pleadings are of critical importance to the articulation of any party’s case. In defamation actions, rule 69.2 and 69.3 of CPR 2000 contain very stringent requirements drafted in mandatory language such that a party’s pleadings must be precisely framed to enable the court to determine whether the matter complained of is defamatory and the circumstances of the defamatory words. Additionally a party is

always bound by his or her pleadings thus leaving no room for deficiencies that may be critical to the success of his case. Deficient pleadings may well result in a successful application for summary judgment.

[34] I find that the original defence was filed with little or no regard to the rules of procedure as contained in CPR 69.2 and 69.3, which dictate the manner in which a claim in defamation ought properly to be pleaded. The defendants would be disadvantaged going forward, especially given Rule 10.7 as recently revised which precludes a defendant from relying on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree. A party would suffer prejudice if a request to cure these deficiencies while keeping the claim alive was not favourably considered.

[35] The claimant provided little opposition to the defendants' contention on the weakness of their legal practitioner. I find the evidence of the defendants in that regard to be credible and relevant to the issue of prejudice.

#### Analysis of the prejudice to the claimant

[36] The claimant alleges that even the current draft defence will not assist the defendants it being procedurally bad and in violation of CPR 2000, in particular the claimant alleges that paragraphs 2.1, 3, 6, 19.1, 38 and 48 violate rule 10.5(3) and are bad and defective pleadings. *The provision states:—*

*“(1) The defence must set out all the facts on which the defendant relies to dispute the claim.*

*(2) Such statement must be as short as practicable.*

*(3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim*

*(a) are admitted;*

*(b) are denied;*

*(c) are neither admitted nor denied, because the defendant does not know whether they are true; and*

*(d) the defendant wishes the claimant to prove.*

*(4) If the defendant denies any of the allegations in the claim form or statement of claim*

*(a) the defendant must state the reasons for doing so; and*

*(b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.*

*(5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not*

*(a) admit it; or*

*(b) deny it and put forward a different version of events; the defendant must state the reasons for resisting the allegation." ( my emphasis)*

[37] The claimant asserts that the defence is grossly deficient and fails entirely to comply with this requirement of the rules. I am in full agreement with the claimant's submissions on that ground. I accept that part 10 dictates the manner in which a defence to a claim should be pleaded, all of this is in keeping with the objective of avoiding bare denials that do not allow for the narrowing of the issues between the parties. None of the paragraphs referred to above comply with Part 10.5, to the extent that such violation may well invite an application for summary judgment.

[38] The overriding objective requires that I consider the expeditious management of cases and the proper allocation of the court's resources. The deficiencies in the defence can only invite further delays opening the way for requests for further amendments at a later stage; it also embarrasses the claimant by forcing inferences on the pleadings.

## Qualified Privilege

[39] There are occasions upon which on the grounds of public policy and convenience a person is protected if the statements made were fairly warranted by the occasion. In *Adam v Ward* 1917 AC 309 at 344 Lord Atkinson explained the traditional application of the doctrine arising in circumstances of a privileged occasion as one where the person who makes a communication has an interest, or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest to so receive it.<sup>3</sup> In recent times in *Reynolds v Times Newspapers Ltd* [2001] 2 AC and in *Jameel v Wall Street Journal Europe Sprl* 1 AC 359, the occasions for the application for qualified privilege have been extended beyond reciprocity of duty and interest. In *Seaga v Harper* 2008 UKPC 9 the court applying these two decisions acknowledged that their effect was to liberate the law to some extent from the traditional duty-interest concept of qualified privilege to a wider ambit of qualified privilege not confined to its traditional use of media publications but one which had germinated to include certain types of communication founded upon a duty on the part of the maker of the statement to publish it to the world at large. The objective is to protect “responsible journalism”. Those factors are to be determined by the court having regard to all the circumstances when considering whether the publication of particular material was privileged.

[40] In *Jameel* Lord Nicholls refined the factors earlier identified in *Reynolds* explaining that the list was not exhaustive, but was illustrative, with the weight to be given to those and other relevant factors varying from case to case. Some of the factors included:—

- (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.

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<sup>3</sup> See Gately on libel and Slander 11ed para 14.1 to 14.7

- (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. He may have information others do not possess or have not disclosed. An approach to the claimant will not always be necessary.
- (8) Whether the article contained the gist of the claimant's side of the story.
- (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
- (10) The circumstances of the publication, including the timing.

[41] The claimant submits that the defence of qualified privilege pleaded by the defendants comprises recycled allegations of hearsay and rumour, lacking responsible journalism. He alleges that it fails to satisfy any of the major criteria or the common law test restated in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 12, and is incurably bad.

#### The impact of *Reynolds v Times Newspaper*

[42] Whether the court adopts the criteria of "responsible journalism" as an element of qualified privilege is usually an issue for trial. The ruling in *Reynolds* does not alter the manner in which a defence of qualified privilege is required to be pleaded. Direction on the requirements of a pleading a proper defence is provided by CPR69.3. It states:—

*“A defendant (or in the case of a counterclaim, the claimant) who alleges that —*

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

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

*(c) pleads to like effect;*

*must give particulars stating —*

*(i) which of the words complained of are alleged to be statements of fact; and*

*(ii) the facts and matters relied on in support of the allegation that the words are true.” (emphasis added)*

[43] The draft amended defence ballooned from 14 paragraphs to 65 paragraphs. Its impact was to significantly broaden the defence of qualified privilege and fair comment. The draft defence set up a detailed factual matrix justifying the makers various commentaries on the publications and corresponding public interest in receiving the information. Nothing was pleaded by way of establishing responsible journalism and it may well be revealed at trial that the publication failed the test of public interest and that the defendant took improper advantage of the occasion of publication, but the question of whether the publisher behaved fairly and responsibly in gathering and publishing the information is not a requirement at the stage of pleadings.

[44] The amendments made were of significant both in terms of length and content. The claim filed alleged many damning allegations made against the Prime Minister of Dominica which included statements made on the 11<sup>th</sup> November 2011, that he had been providing harborage for absconding criminals from international countries; that he was connected with Iranian rackets of producing counterfeit US dollars; that he had links with underworld Chinese mafia, Russian mafia and several Jihadist outfits. On the 13<sup>th</sup> November 2011; that a passport agreement

was signed by the Prime Minister and the Iranians for passport sales under a separate program that is not one of the government's official program of which the individual all inclusive is \$25,000.00 and for a family \$50,000.00; that following a meeting of the 29<sup>th</sup> July 2009 Bazdiazamani and the Prime Minister citizens of Iran Central Asia and the Middle East could obtain second citizenship and a passport; On the 14<sup>th</sup> of November 2011 the first defendant said: that his writing with regard to the wanton sale of passports is clear and unequivocal and for which he made no apologies for bringing this matter of national interest to the attention of the public, he modified an earlier made statement by stating that Karan Singh had had a criminal complaint made against him, although his earlier statement referring to Karan Singh was that the Prime Minister was harbouring an absconding criminal; on the 23<sup>rd</sup> of October 2011 the maker stated that the passport program was being used to line the pockets of a few individuals while allowing Dominican passports to go to persons of unfavourable repute. Other numerous damning statements were made including that some of the terrorist lurking in India may well be customers of the Government of Dominica, and the recurring allegation that the Prime Minister has set up a parallel passport sale program than that legislated and which had avoided the required notification in the gazette. The foregoing represents a summary of some of the allegations made. The draft defence does not deny the comments made but relies almost exclusively on the defence of qualified privilege.

- [45] The citizenship by investment program is one which has engage public interest, commentary and sentiment up and down the Caribbean, internationally in countries where it has been implemented and even in those where it has not. The usual expressions of concern from the public and the media include concerns about policing the program to ensure that it is not taken advantage of by dubious characters and of the underpinning political policy and objective. No doubt Dominica is no exception. But the manner of the reporting and of the commentary must reflect balance and care ought to be taken to exclude defamatory matter unnecessary to the fulfilment of the particular duty or the protection of the particular interest upon which the privilege is founded otherwise the only logical



conclusion to be drawn is that the maker was motivated by malice and used what is a matter of public interest to drag in irrelevant defamatory matter for personal spite. These were the views articulated by Lord Diplock in *Horrocks v Lowe* [1975] AC 135. He said :—

*“so the motive with which a defendant on a privileged occasion made a statement defamatory of the claimant becomes crucial. The protection might, however, be illusory if the onus lay on him to prove that he was actuated solely by a sense of the relevant duty or a desire to protect the relevant interest. So he is entitled to be protected by the privilege unless some other dominant and improper motive on his part is proved. “express malice” is the term of art descriptive of such motive. Broadly speaking it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interest”*

[46] Lord Diplock in his exposition of the law directed that malice is to be carefully distinguished from other states of mind such as carelessness, from inaccurate language or from sloppy reasoning. His view continues to be an accurate statement of the law, but *Reynolds* narrowed the umbrella of persons entitled to that protection to those who engaged in “responsible journalism” and by setting criteria for what would be considered responsible journalism a court can at the stage of the pleadings form a determination of whether a defendant comes under that umbrella of protection.

[47] The magnitude of the amendments made and the detail with which the defence was pleaded eliminated conjecture and allowed for critical assessment of both the existing and the intended defence. I find that the matters reported were ones the truth of which could be easily verifiable. The maker of the statements in certain

publications expressed the view that he made no apologies for the statements he made or was about to make. This to my mind is a defiance of an interest in seeking the truth about the publications he was making. In many of the publications to which the claim referred I find that the maker of the statements were not motivated by the attainment of balanced reporting, Each of the statements were made with a tone that was rancorous and both the headline and content enflamed the issues on which the public may have held an interest, with malicious hostility.

[48] Having assessed the pleadings and the application to amend the defence and having had the benefit of the submissions of the parties both written and oral, I am of the considered view that the interest of the administration of justice is served by allowing the amendment of the defence, but I do so with some restriction as to the pleadings that do not meet the threshold criteria as set out in Reynolds. As such paragraphs 13.1, 17, 19.1, 20.1, 24, 33, 34, 34.1, 34.3, paragraph 36 in so far as it refers to Paragraph 13.1 and 13.2, paragraph 37 in so far as it pleads fair comment on an occasion of qualified privileged, and paragraph 40 are all struck from the draft amended defence. Further the following are struck down as violating paragraph 10.5 (3) of CPR 2000:— paragraphs 2.1, 3, 6, 19.1 , 38 and 48 and the amendment is allowed in terms of the draft amended defence and counterclaim with the exception of the paragraphs ordered deleted.

#### **Further Directions**

[49] The amended defence is to be filed within 14 days hereof and liberty is given to the claimant to file an amended reply if any within 14 days of service of the amended defence. Liberty to the ancillary defendant, to file an amended ancillary defence within 14 days of service of the amended defence and counterclaim. I further order that the proceedings are to be scheduled at the court's earliest opportunity for case management conference.

Costs

- [50] Costs are awarded to the claimant in the sum of \$3500.00 in recognition of the seniority with which the proceedings were attended.

V.GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER