



Neutral Citation: [2025] CIGC (Civ) 9

G0043 OF 2025

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

BETWEEN:

LAYMAN DANIEL SCOTT

PLAINTIFF

AND:

KERRY TIBBETTS

DEFENDANT

Coram: Hon. Justice Marlene Carter

Appearances: Mr. Andrew Jackson of Appleby for the Plaintiff
The Defendant, Ms. Kerry Tibbetts appears by ZOOM, unrepresented

Hearing Dates: 19 and 28 February 2025

Civil Division – Writ of Summons - Defamation - Application for Interim Injunctive Relief

RULING

1. On 19 February 2025, this Court granted the Plaintiff's *ex parte* application for an interim injunction (hereafter "the *ex parte* order"), ordering inter alia:

"1. The Defendant shall immediately remove from the Facebook pages which she operates, namely "Cayman Brac The BEST

Island” (www.facebook.com/caymanbracthebestisland) and “I Am Caymanian. I Have NO Rights.”

(www.facebook.com/IAmCaymanianIhaveNORights), and from any other online platforms within her control, the videos which she posted on or around the following dates and times:

- 1.1. 9:07 am on 27 January 2025;
- 1.2. 1:01 pm on 31 January 2025;
- 1.3. 1:13 pm on 3 February 2025;
- 1.4. 1:00 pm on 10 February 2025; and
- 1.5. 5:15 pm on 13 February 2025

(together, the **Videos**), and shall also immediately remove any posts from those pages which include or repeat the statements which the Plaintiff has claimed are defamatory (as set out in the First Affidavit of Layman Daniel Scott filed in these proceedings), including but not limited to the posts made via the “Cayman Brac The BEST Island” Facebook page on 13 February 2025 publishing photographs of each page of the Plaintiff’s letter before action which quoted those statements.

2. The Defendant shall not further publish any of the Videos and/or cause any of the Videos to be published and shall not make any statements similar to those which the Plaintiff has claimed are defamatory (as set out in the First Affidavit of Layman Daniel Scott), until further Order.
 3. Up to and including the trial of this claim, the Defendant be restrained and an injunction is hereby granted restraining her from publishing on social media, circulating, distributing or otherwise publishing or causing to be printed, circulated, distributed or otherwise words to the effect that Layman Daniel Scott (a) has ‘bought votes’; (v) bribed, corrupted or otherwise colluded with the judiciary; (c) has, or intends to misappropriate or misuse public funds; or (d) has employed or otherwise sought to incentivise, or even to encourage, any person to attempt and/or actually to engage in any verbal or physical altercation with the Defendant”
2. The application for the ex parte order was made on notice to the Defendant. At the hearing of the application, after counsel for the Plaintiff made submissions to the court in favour of the grant of the ex parte order, the Defendant indicated to the Court that she was willing to take down the videos that “they’re upset about and any post that they are upset about.” She stated to the Court, referring to the alleged defamatory statements, that she was upset and may have said something she should not have.

3. The Defendant undertook to take the pages down. However, upon being served with a draft order which incorporated these undertakings, the Defendant raised queries regarding the extent of the undertakings. The Court then issued its order granting the Plaintiff's application for the ex parte order mindful that the Defendant has appeared on notice unrepresented and mindful too that any matter that the Defendant would seek to bring before the Court relating to varying or discharging the ex parte order, would be aired at the *inter partes* hearing which was set for 28 February 2025.
4. At the *inter partes* hearing on 28 February 2025, counsel for the Plaintiff and the Defendant both addressed the Court. This court determined that the *ex parte* order was to continue until further court order.
5. These are my reasons for the initial grant of the ex parte order and for the continuance until further notice.
6. The Plaintiff filed a generally indorsed writ of summons on 14 February 2025 in which he claimed that the Defendant had "*made and published or caused to be published defamatory statements about the Plaintiff*" in and by way of video recordings posted on Facebook pages, "*Cayman Brac: The BEST Island*" and "*I Am Caymanian. I Have NO Rights.*" ("**Facebook Pages**").
7. The Plaintiff contends that these statements are unarguably defamatory of him, thoroughly untrue and seriously harmful.
8. The application for the ex parte order was made on an urgent basis. The Plaintiff, in his affidavit in support of the application, stated that the Defendant had refused to cease and desist even after being served with a letter before action dated 12 February 2025 or even to do so pending the outcome of an *inter partes* hearing. The Plaintiff's application sought to prevent the alleged defamatory statements from being further disseminated. It is contended that the rate and frequency of the Defendant's posts increased after the letter before action was served on the Defendant.
9. I am satisfied that the application is urgent, and that the Defendant has had notice of the application.
10. Where an interim injunction is sought to restrain defamation, the general rule is that the injunction will only be granted if there is no defence with a realistic prospect of success.¹ The Plaintiff submits that the Defendant has no realistic prospect of successfully defending the claim on any basis.

¹ Clerk & Lindsell on Torts (24th Ed.) at [21-254]

11. The Plaintiff refers the Court to a number of authorities regarding the Court's jurisdiction to grant injunctive relief to restrain defamation.²
12. In *Robins v Kordowski*³, Henriques J gave a detailed analysis of the criteria for granting interim injunctive relief in a libel action and identified the following considerations:
 - i) Whether the statements were unarguably defamatory.
 - ii) Whether there were any grounds for concluding that the statements might be true.
 - iii) Whether there is any other defence that might succeed.
 - iv) The balance of convenience.
13. Counsel for the Plaintiff addressed these matters as set out below.

Whether the statements were unarguably defamatory.

14. In his first affidavit, the Plaintiff set out the statements he alleges are unarguably defamatory:

“Alleged Vote-Buying

13. In a video posted on 27 January 2025, the Defendant stated that I had been:

‘...going around buying all these house stuff for people, new furniture, appliances, this that the other... storm came bought all the plywood and board up people houses; that's just a good humanitarian act being covered over by a vote buying. He's been vote buying up here for over a year.’

Allegations of Judicial Bribery and Corruption

14. In the same video posted on 27 January 2025, the Defendant proceeded to discuss proceedings which Ernst & Young, Maples FS, KPMG and Bank of Butterfield had brought against her in 2015 for injunctive relief restraining publication of a spreadsheet containing employment information relating to some 21,000 work permit holders, which the Defendant had received from the Department of Immigration, pursuant to a Freedom of Information Request [CLL-1/2]. I was the Regional Managing Partner of Ernst &

² *Greene v Associated Newspapers Ltd* [2005] QB 972, at [57]; *Farrall v Kordowski* [2010] EWHC 2436 (QB); *Robins v Kordowski* [2011] EWHC 981 (QB)

³ [2011] EWHC 981 (QB)

Young at the time of those proceedings (as noted above), and I made an affidavit in support of that application (as did representatives of the three other applicant firms).

15. *In a further video posted on 31 January 2025, the Defendant returned to the same topic at considerable length. Among other things, she particularly stated, with respect to the judgment that Smellie CJ delivered in those proceedings on 12 February 2015 (reported at [2015] 1 CILR 151), granting the injunctions which sought to restrain publication of the abovementioned spreadsheet ...*

'Now they had this is, this is the corruption of this entire matter. They brought David Legge [whom I believe was then an owner of the Cayman Compass] into that ex parte summons against me. I had no idea this is taking place, people I never knew. I had no idea an ex parte summons should have ever been entertained, but Smellie can entertain, and that's the corruption in the judiciary ...

16. *In that connection, the Defendant referred to my affidavit in support of the application and further stated:*

"Remember the messenger that told me that she was involved in the entire matter with that and Dan Scott led this? Well, I knew that. I have the proof of that right here" [CLL-1/14].

17. *In a further video posted on 10 February 2025, the Defendant again returned to the same topic, stating that:*

'...that was the oppression that these companies did; that Dan Scott led the freaking lawsuit with. That was the oppression they were dishing out at the time to our people in this country, just dishing it out and dishing it out because they could do it and get away with it ...

Allegations of an Intention to Misappropriate and/or Misuse Public Funds

18. *In a video posted on 3 February 2025, the Defendant stated that:*

'And it seems like that's what a lot of people are trying to do to you up here in Cayman Brac East, misinforming you. And that's why you all need to vote for Ruth Ann Bodden. Ruth Ann Bodden is a better choice than Dan Scott. She na no millionaire, she's not coming rob the public purse, and set up

all her buddies and her corporate people and all those cocktail partiers that she hung out with all the years and laugh about how much money they billed the Government to tell them all kind of stupidity in reports, and we pay for it blindly' [CLL-1/36]; and

'Dan Scott, well, he's just looking to enrich himself and his people' [CLL-1/52].

19. *In the 10 February 2025 video, the Defendant also returned to that same topic, stating:*

'...you don't see the man paving the... way for his retirement, setting up his entire empire off of us. That's what his plan is, take all of our assets once he get elected and get Premiership. You know, he's on the other side of the Parliament where the ruling government sits, like where Miss Julie is sitting and all that. And then they would take every one of our assets and sell em off, slice off the arm, sell it to whoever they can, sell it to get and then turn around after selling all of that, I can pretty much assure you, Dan the man, has a plan. He plan is to create a real estate company that's going to represent them. They probably have already formed that already, and it's already doing its thing. So they will just sign up with them to take it... make the Government sign up with them to sell these assets to their... conglomerates and their big setup of companies that they're putting together. That's the plan. I tell you' [CLL-1/79];

'My daddy, I thank him every day. I thank you. Thank you, Papa Smith, for giving me the knowledge of political awareness to know when they are lying, when their promises are empty when they have made a plan to, like Dan, the man, to take everything away from us. Oh yeah. And you know who was going to benefit from that plan of Dan's, him and his bunch. I tell you that all the time. I tell you that all the time' [CLL-1/81]; and

'Yeah, Dan, Dan the man has a plan. He has a plan to profit himself and his conglomerate of but it's once they get all our assets. He had a plan alright' [CLL-1/82].

Alleged Payment of Person to Incite and Seek to Fight the Defendant

20. *In the 3 February 2025 video, the Defendant stated that:*

'Dan Scott has hired a puppet. I would, I would venture to say... I'm making an assumption right now that he has paid Nollie Brown to come to the Brac, and that's the last time imma call his name, so this person can come up to the Brac, get out there and incite against me, to fight me. And the police didn't even do one thing. They didn't even arrest him. And they see it, they hear it. And he out there propaganda-ing out in front of Dan Scott house. I must come down to the Creek dock and have a fight with him, really' [CLL-1/31].

Further Assertions as to the Truth of Those Statements

21. *In a further video posted on 13 February 2025 – once the Defendant had received a hard copy of a letter before action from my attorneys requesting (among other things) the removal of the defamatory videos from her Facebook page(s) and that she give an undertaking not to publish further defamatory material about me, either permanently or until the outcome of an inter partes hearing [X] – the Defendant stated:*

'...I want you to see this. This is the oppression. This is the oppression of our people. In our country, we have no freedom of speech, none whatsoever. This is when you're afraid of losing an election, you press the person talking you, coming to you and telling you the truth. This is what you do. I have not said anything that has been absolutely a lie. None of it is. Tell me, my people. Should I take my stuff down? Or should I stay strong and fight this battle? I'm OK to fight it. I can't fight it alone. I have no money to fight it, and that's why the government has teamed up, probably partial and part with this - to hold, withhold my money and not pay me what they owe me. This is the oppression I'm so glad I can bring it to you. This is the raw oppression of us speaking up about something that has oppressed us in our country. OK, I've not brought you anything that has been fake or false' [CLL-1/121].

15. The Plaintiff contends that these statements are defamatory on their face.

Whether there were any grounds for concluding that the statements might be true.

16. The Plaintiff stated that there was no truth in any of the allegations made by the Defendant. Counsel for the Plaintiff submitted that the Defendant could not substantiate any of the allegations made in the statements. He submitted that there is no justification for these and stated further that the Plaintiff cannot avoid liability

for defamation by claiming to repeat defamatory statements that may have been made by another.

17. The Plaintiff asked the Court to note that even after service of the letter before action, the Defendant has not pointed to any matter to demonstrate the truth of her statements. Referring to the Plaintiff's actions after receipt of the letter before action, counsel for the Plaintiff submitted:

“...the proper inference to be drawn from such behaviour is that the Defendant well knows that she has made up stories about the Plaintiff which have no basis in fact, and now, in order to save face, wants the public to believe that she has taken the moral high ground.”

Whether there is any other defence that might succeed.

18. Clerk & Lindsell on Torts⁴ lists the main defences usually relied upon by a defendant to an action for libel and or defamation:
- i) Justification (truth).
 - ii) Privilege which may be (a) absolute; or (b) qualified.
 - iii) Publication on a matter of public interest (previously Reynolds privilege).
 - iv) Fair Comment / Honest Opinion
19. It was submitted that there was no justification or truth that the Defendant could point to as a defence to her actions. It was further submitted that there was no ground upon which the Defendant could claim absolute privilege nor qualified privilege.
20. Counsel referred the Court to *Robins*, a media case with facts that were similar to those before the Court. Counsel submitted that the Plaintiff could not show any evidence that she had taken steps in garnering and publishing information that had been both responsible and fair.
21. Counsel contended that in order for the Defendant to claim a defence that the publication of the statements was on a matter of public interest, she would have to satisfy the test in *Reynolds*⁵. He referred to the following pertinent matters when considering whether such a defence could be made out. These are:

⁴ (24th Edition) at [21-254]

⁵ [2001] 2 AC 127 [A/1] at 201

- “i) 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.*
- ii) The nature of the allegation, and the extent to which the subject matter is a matter of public concern.*
- iii) 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.*
- iv) The steps taken to verify the information.*
- v) The status of the information. The allegation may have already been the subject of investigation which commands respect.*
- vi) The urgency of the matter. News is often a perishable commodity.*
- vii) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.*
- viii) Whether the article contained the gist of the plaintiff's side of the story.*
- ix) The tone of the article. A newspaper can raise queries or call for investigation. It need not adopt allegations as statements of fact.*
- x) The circumstances of the publication, including the timing.”*

22. Regarding the defence of fair comment or honest opinion, Counsel for the Plaintiff noted that the authorities point to five key elements of which a court would have to be convinced for this defence to be made out. He submitted that the Defendant could not satisfy the criteria. Specifically, Counsel noted that the Defendant had not framed her statements as comments and, in any event, insisted that they were based on facts which were true, but that this was clearly not the case. The Defendant could produce no factual evidence to establish the truth to any of her statements.
23. The five key elements which the defendant must prove to raise the defence of fair comment or honest opinion are as follows:
- (a) The subject matter of the comment must be of public interest.
 - (b) The statement must be recognisable as comment as distinct from fact.
 - (c) The comment must be based on facts which are true or protected by privilege.

- (d) The comment must indicate explicitly or implicitly, at least in general terms, the facts on which it is based.
- (e) The comment must be one which an honest person could hold. This is an objective test but should not be confused with reasonableness; if an honest person could have made the comment, however prejudiced, exaggerated or obstinate his or her views, this requirement will be fulfilled.

The balance of convenience

- 24. The balance of convenience lay in the grant of the *ex parte* Order. The statements made by the Defendant appeared to be unarguably defamatory. They encompassed allegations that the Plaintiff had bought votes, that he had bribed, corrupted or otherwise colluded with the Judiciary, that he had or intended to misappropriate or misuse public funds especially if elected to Parliament and that he had employed, or encouraged another to try or to engage in verbal and or physical altercation with the Defendant.
- 25. In adhering to the duty of full and frank disclosure, an obligation placed on a Plaintiff seeking an *ex parte* injunction, the Plaintiff's attorney submitted that he could not point to any defence that the Plaintiff could make. He invited the Court to consider whether the Defendant has any prospect of successfully raising any of the available defences. Conversely, Counsel submitted, there was clearly, on the facts, a reasonable prospect of success on the part of the Plaintiff.
- 26. There was nothing before the Court which pointed to a defence available to the Defendant. At the hearing of the application the Defendant expressed her wish to remove the alleged defamatory material. While the Defendant sought to explain the reasons behind her actions, there was nothing which was raised by her as a possible defence with any prospect of success without more. She did not advance a defence. There was nothing presented to the Court to suggest that the statements were true or that the Plaintiff had a defence as contemplated in *Robins* for publication of the statements.
- 27. Damages are not an adequate remedy in this case given the nature of the allegations and given the context in which such allegations are being made. The Plaintiff is a candidate in the upcoming general elections. To allow the continued publication of statements which appear to be unarguably defamatory, and which the Plaintiff claimed could besmirch his reputation to remain could cause significant damage.
- 28. This Court considered whether the Defendant could be prejudiced if the alleged defamatory statements were removed pending the *inter partes* hearing. Again,

there was nothing to suggest that this was the case. The Defendant could well continue to publish all other matters pertaining to the election and to information that she wished to disseminate to her listeners/viewers without suffering prejudice or damage. The Defendant did not indicate, when allowed to respond, that she would be prejudiced.

29. In light of the foregoing, this Court found that the statements were unarguably defamatory, there were no grounds for concluding that the statements could be true, there was no other defence presented that could succeed and the balance of convenience lay in granting the *ex parte* Order.

Inter partes hearing

30. The *inter partes* hearing took place at 9:30 am on 28 February 2025. At that hearing, counsel for the Plaintiff referred to a further affidavit filed on behalf of the Plaintiff. The affidavit of Ross Andrew McLeod was filed by way of an update to the Court since the *ex parte* order had been granted. The McLeod affidavit revealed that the Defendant had taken steps to remove the offending videos and posts. However, the position remained that:

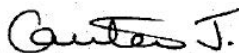
“All of the content identified in the letter remains online. ...she removed only the content specifically listed in the order, and not that which was covered by the wider terms of the injunctions it imposed.”

31. On the morning of the *inter partes* hearing, the Plaintiff forwarded a sworn but not filed affidavit to the Court. In this affidavit, the Plaintiff related that the content referred to in Mr. McLeod's affidavit were videos that were only speaking of a “fractional small percentage above the Plaintiff”. The Defendant indicated that it appeared to her that she was being asked to remove videos which were not discussing the Plaintiff in their entirety. She related that in such videos, the Plaintiff was not the only party that was being discussed, there were other parties included, other declared candidates for the upcoming general elections.
32. The Defendant asked this Court to allow her to keep those videos after removing all restrained content that mentioned the Plaintiff and to relaunch them on her social media page for the benefit of the community audience. The Defendant then sought time to do so, i.e., remove the offending content, put the videos back together, and then relaunch them on her page.
33. Counsel for the Plaintiff submitted that there was no arguable basis for discharge of the *ex parte* order. Counsel argued that the Court needed to be cognizant that the allegations made in the defamatory statements appeared not only to refer to the Plaintiff in his capacity as a candidate for elections but also questioned his integrity and moral compass beyond the political campaign. He submitted that the

Defendant had raised no defence and had instead admitted that some of her statements had been made in anger and without regard to the truth. He further submitted that it appeared that the Defendant was, at the very least, reckless in making the allegations and malicious in not having due regard to whether there was any basis in truth.

34. Counsel noted that while the Defendant did not seek to repeat the allegations in terms, she continued to assert the truthfulness of the videos and the statements made within those videos and, to this extent, exacerbated the harm which could be caused if the *ex parte* order was not continued.
35. The Defendant asserted that this was not a personal action against the Plaintiff. She maintained that the Plaintiff was a declared candidate, and she was seeking to protect freedom of awareness and information. She agreed to take down the videos, and any other material within the pages and further videos that could run afoul of the *ex parte* order.
36. There being no application to discharge, the terms of the *ex parte* order remain in place and varied to encompass further material and videos which have been identified as falling within the ambit of the prohibition. The Plaintiff is not prevented by the terms of that enlarged order from reposting the videos and posts once the material and content which falls within the ambit of the *ex parte* order has been removed.
37. In written submissions, counsel for the Plaintiff referred to the following passage from the case of *Reynolds v Times Newspapers Ltd*. The statements by Lord Nicholls are apt in the circumstances of this case.

"In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognise that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others."



Hon. Justice Marlene Carter
Judge of the Grand Court

