

**IN THE COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Division**  
**2015/CLE/gen/007462**

**SIDNEY DURAN CUNNINGHAM**

Claimant

**B E T W E E N**

**AND**

**SCOTIABANK (BAHAMAS) LIMITED**

First Defendant

**AND**

**FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED**

Second Defendant

**AND**

**COMMONWEALTH BANK LIMITED**

Third Defendant

**Before:** The Honourable Madam Justice Camille Darville Gomez

**Appearances:** Mr. Sidney Duran Cuningham pro se  
Mr. Raynard Rigby, KC and Mr. Christopher Francis for the Second Defendant

**Hearing Date:** 15 December, 2022

**JUDGMENT**

**Darville Gomez, J**

This action was brought by the Claimant against the Second Defendant for defamation per se and libel per se. The Claimant alleged that the Second Defendant intentionally and with malice published false and defamatory statements about him. He has alleged that by reason of the false publication of the words complained of that he has been injured and suffered damages per se, and considerable hurt, distress and embarrassment.

## **HELD**

On the 17<sup>th</sup> May, 2024 I gave my decision orally with written reasons to follow. I do so now.

For the reasons hereinafter set out I have dismissed the action against the Second Defendant and awarded costs to the Second Defendant to be fixed, if not agreed.

### **Introduction and Background**

- [1.] This action was commenced by Writ of Summons filed on June 3, 2015 and the Statement of Claim was filed on June 23, 2015.
- [2.] The Second Defendants are the only remaining of three Defendants in this action because the matter was withdrawn against the First and Third Defendant sometime in 2015.
- [3.] The trial was commenced on December 1, 2022 and at the conclusion of the trial, the Second Defendant made a no case submission.
- [4.] However, in order to properly follow how the instant action came to be commenced against the Second Defendant, it is necessary to refer to an earlier action commenced by Mr. Obie Ferguson in Supreme Court Action Number, 01245 of 2013 (hereafter referred to as the “Ferguson action”).
- [5.] I am grateful to the Claimant and the Second Defendant’s Counsel for their helpful submissions and I commend them.
- [6.] Sometime in 2013 Obie Ferguson & Co. commenced an action against Duran Cunningham aka Sidney Duran Cunningham and subsequently obtained a judgment against him which was certified by an Order of the Supreme Court on December 13, 2013 of \$6,582 together with interest and costs.
- [7.] In an attempt to enforce the judgment debt against the Claimant/Judgment Debtor, Obie Ferguson & Co. commenced garnishee proceedings and on March 27, 2015 the Honourable Justice Mr. Milton Evans (as he then was) granted a Garnishee Nisi Order against all of the Defendants including the Second Defendant.
- [8.] On April 1, 2015 the Second Defendant was served with the Garnishee Order Nisi Order (“the Garnishee Order”) which had a return date before Justice Evans on April 21, 2015.
- [9.] The Second Defendant in an attempt to comply with the Garnishee Order provided copies of the Claimant’s statement of account on April 20, 2015 in anticipation of making an application to be withdrawn from the garnishee proceedings because the statements demonstrated that the Claimant had no monies on deposit and was in fact indebted to the Second Defendant.
- [10.] On the return date of April 21, 2015, Justice Evans (as he then was) issued a stay of the garnishee proceedings pending the determination of an appeal by the Claimant/Judgment Debtor against the issuance of a Certificate of Taxation by the Deputy Registrar in the Ferguson action.
- [11.] By letter dated April 24, 2015 Halsbury Chambers (hereinafter called the “the Halsbury Chambers letter”) then Counsel for the Second Defendant wrote to Obie Ferguson & Co. requesting that the

application against the Second Defendant as garnishee be withdrawn because the Second Defendant held no monies on account for the Claimant. The contents of the letter are set out below:

*"We write further to our appearance before His Lordship Milton Evans on the 21<sup>st</sup> instant for the hearing of the Garnishee Nisi Order application by you.*

*Please be advised that the Defendant, Duran Cunningham, is indebted to CIBC First Caribbean International bank in the sum of \$844,560.86 for outstanding Judgments that the Bank is still in the process of enforcing against him. For ease of reference, kindly find attached a copy of the Statement of Account for Duran Cunningham.*

*In the circumstances, we shall be grateful of you would withdraw your application as against CIBC First Caribbean International Bank."*

[12.] By an Affidavit filed on May 28, 2015 by Obie Ferguson & Co. and sworn by Queenie Ferguson ("the Ferguson affidavit") in response to an affidavit filed by the Claimant on May 20, 2015 she exhibited letters from various financial institutions including the Halsbury Chambers letter at paragraph 11. It was. Mrs. Ferguson at paragraph 9 of the said Ferguson affidavit stated as follows:

*"9. That paragraph 8 of the Defendant's affidavit is not truthful in that he has contributed solely to his bank account being frozen. There is now produced and shown to me letters from Scotiabank (Bahamas) Ltd., Commonwealth Bank, and CIBC First Caribbean International banks marked Exhibited "QF1."*

[13.] The Second Defendant submitted that at no time was Obie Ferguson & Co. instructed to publish the Halsbury Chambers letter and in fact, did not anticipate that it would be utilized other than for the withdrawal of the Second Defendant from the garnishee proceedings.

[14.] Additionally, the Second Defendant submitted that the affidavit of the Claimant/Judgment Debtor filed on May 20, 2015 and the Ferguson affidavit filed on May 28, 2015 in reply were not in breach of the Order issued by Justice Milton Evans (as he then was) because both of these affidavits were filed in the substantive action and not as part of the garnishee proceedings.

### **The Instant Action**

[15.] The Claimant commenced the instant action on June 3, 2015 against the Second Defendant (and the other financial institutions) whose letters were referred to and exhibited in the Ferguson affidavit.

[16.] As it related to the Second Defendant, the Claimant in his Indorsement in the Writ of Summons alleged as follows:

*"1. The claim relates to Negligent and defamatory statements made in writing on or about April 17<sup>th</sup> 2015 and April 24<sup>th</sup> 2015 and published by or on the behalf of the Defendants herein, the said statement identified the Plaintiff Sidney Duran Cunningham. Further the claim that will be made out in the Statement of Claim will be seeking a trial of this matter and damages per se for the said defamatory statements.*

*3. The 2<sup>nd</sup> Defendant CIBC FIRST CARIBBEAN INTERNATIONAL BANK on or about April 24<sup>th</sup>, 2015 Negligently instructed their Attorneys at HALSBURY Chambers to write a letter to Obie*

*Ferguson Esq alleging that the Plaintiff was indebted to them in the sum of \$844,560.86 for outstanding Judgments and further the 2<sup>nd</sup> Defendant disclosed to the addressee the Plaintiff's banking records in the form of printouts from the 2<sup>nd</sup> Defendant's computer systems showing the Plaintiff's personal banking information.*

5. *The Defendants knew or should have known the Information provided to Obie Ferguson was unauthorized in the case of the 3<sup>rd</sup> Defendant AND false, defamatory and/or misleading as to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, further that the letters would harm and injure the reputation of the Plaintiff in his trade or otherwise."*

[17.] At the trial, the Claimant gave evidence on his own behalf and called Mr. Antonio Knowles.

[18.] At the close of the Claimant's case, the Second Defendant made a no case submission.

### **Issues**

[19.] I have defined the issues as follows:

- I. Whether the Second Defendant published the Halsbury Chambers letter?
- II. Were the words in the letter defamatory of Mr. Cunningham?
- III. If so, are there any possible defences available to the Second Defendant?

### **The Evidence**

#### ***The Claimant's Evidence***

[20.] The Claimant alleged the following in his Witness Statement:

“3. *My contention is that the Second Defendant intentionally and with malice published false and defamatory statements about me that caused me deep personal grief and caused severe damage to my reputation.*

7. *This contempt and defiance alone speaks of the malicious intent of the publication. Further, the customer inquiry screen print (not a bank statement) included in their documents shows the name of Duran Cunningham. The bank would have known the Plaintiff in court was not and could not be legally Duran Cunningham in their computer system.*

10. *I commissioned a search of the Cause List Index of the Supreme Court Registry which concluded that the stated Judgment does not exist. An independent professional service, Title House Limited (attachment DC3), was hired by me to do a Judgment search for Sidney Duran Cunningham, Duran Sidney Cunningham and alias Duran Cunningham. The search period is from 1980 to June 23<sup>rd</sup> 2022. The search concluded that there are no judgments of any kind in the Bahamas Supreme Court Registry against me and in favour of the Second Defendant.*

11. *The independent search also concluded there is no record of any court action initiated by the Second Defendant against me that eventually saw them with a win that gave them a judgment.*

15. *There is no Judge's ruling or order that awards any damages to the second Defendant from me. It was all a lie and part of an extensive agenda to deprive me of my property, my reputation, access to funding and financing from any source. Some \$3,600,000.00 in additional income was not realized as a consequence. After taking my property from me and selling it for less than half the*

*market value using fraudulent affidavits, they now came back to exact another brutal personal attack.”*

[21.] Under cross examination the Claimant stated as follows:

- (i) That the Halsbury Chambers letter to Obie Ferguson & Co. was false and defamatory because there was no judgment against him.
- (ii) He confirmed that he was the Sidney Duran Cunningham in Supreme Court Action Number 1419 of 2004 which had been commenced by First Caribbean Bank formally Barclays.
- (iii) He was asked to read into the record the Order obtained by the Second Defendant in the said Supreme Court Action Number 1419 of 2004. It read as follows:

*“That the Defendant do deliver up to the Plaintiff vacant possession of all that piece parcel or lot of land known as Lot # 18 in Block Number Five (5) in the Subdivision called and known as Sea Beach Addition situate in the vicinity of Delaporte” in the Western District of the Island of New Providence more particularly described in the Mortgage dated the 18<sup>th</sup> day of December A.D., 1998 and made between the Defendant of the one part and the Plaintiff of the other part and recorded in the said Registry of Records in Volume 7459 at pages 559 to 574, within Thirty (30) days of the date hereof Unless the Defendant do pay the sum of \$501,282.64 due and owing under the said Mortgage.”*

- (iv) He admitted that he had not paid the sum of \$501,000 in 30 days.
- (v) He confirmed that he goes by both names Sidney Cunningham and Duran Cunningham.
- (vi) The following exchange occurred when he was asked about publication of the letter dated April 24<sup>th</sup>, 2015 from Halsbury Chambers to Obie Ferguson & Co:
  - Q. To whom was the letter sent to Obie Ferguson published?
  - A. It was published in an Affidavit of Obie Ferguson.
  - Q. Was there any affidavit filed by the Bank?
  - A. No. CIBC published the letter by drafting it and sending it to Obie Ferguson.
  - Q. Who did Obie Ferguson circulate it to?
  - A. Every bank in the country was a party.
  - Q. Do you know who he published it to?
  - A. I got a copy of the affidavit.
  - Q. Do you know who received the affidavit?
  - A. No.
- (vii) He denied that he owed the Second Defendant any money.
- (viii) He admitted that he owed Barfincor money.

### ***Antonio Knowles' Evidence***

[22.] He is a certified Public Accountant who was tendered as an expert witness. There was an Expert Witness Statement filed on February 11, 2022 which contained a Report dated February 9, 2022.

- [23.] He testified that the objective of his report was to “consider the representation of the Defendant that Mr. Cunningham has eight hundred and forty four thousand, five hundred and sixty dollars and eight-six cents (\$844,560.86) in judgment and to report the effects and implications of that representation when he seeks funding for personal and business developments or investors”. He concluded in his report that the effect of the published Halsbury Chambers letter was that the Claimant lost an estimated three million dollars (\$3,000,000) in revenue over the last seven (7) years since the judgment letter has been published or circulated.”
- [24.] Under cross examination Mr Knowles admitted inter alia, that (i) the Claimant had never made an application for funding; (ii) he only received a one year financial statement from the Claimant in order to prepare his report and that he could not say what year it referred to; (iii) he never had sight of the Halsbury Chambers letter, that he was told of its contents by the Claimant.
- [25.] Further, he agreed that if the Claimant had in fact owed the Bank, the entirety of the report would be of no value and that he was unaware that in 2009 that an order for vacant possession and judgment had been entered against the Claimant. He confirmed that had he been aware of the judgment that the entirety of his report would have been different and he may not have written the report.
- [26.] Finally, Mr. Knowles confirmed that he knew the Claimant for twenty five (25) years as Duran Cunningham and that he had just found out that his first name was in fact, Sidney.

#### **The Claimants submissions**

- [27.] The Claimant submitted that the Second Defendant intentionally and with malice published false and defamatory statements about him in a letter dated April 24, 2015 (referred to earlier as the Halsbury Chambers letter) issued to Obie Ferguson that was included in an affidavit filed May 28<sup>th</sup> that caused him deep personal grief and severe damage to his reputation. The words complained of in their natural and ordinary meaning meant and were understood to mean that he was guilty of not paying judgments obtained and issued by a court of the Bahamas and was in fact liable to be made bankrupt. Further, that he was untrustworthy and should not be trusted with money and that members of the business public should not associate with and/or do business with him.
- [28.] He submitted that there was a stay of the garnishee proceedings by then Justice Milton Evans on April 21, 2015 which was then lifted on June 10, 2015. The said Halsbury Chambers letter was written on April 24, 2015 in contempt of the stay proceedings and none of the other banks (that is, Royal Bank of Canada or Scotiabank (Bahamas) Ltd continued with garnishee proceedings while the stay was in place. Therefore, he submitted that the Second Defendant was in contempt of court and it is this act of contempt that created the defamatory act. Further, and in any event that the Second Defendant could not prove the truth of its own published documents.
- [29.] He made other claims such as violation of the Data Protection Act and that the loan inquiry was fabricated.

#### **Analysis and Disposition**

[30.] I have considered the evidence of both parties and have found as follows:

- (i) The Claimant went by the names Duran Cunningham and Sidney Duran Cunningham;
- (ii) The Claimant was indebted to the Second Defendant by virtue of a judgment obtained in Action No. 1419 of 2004 for \$501,282.64 in 2009.
- (iii) The Second Defendant had been served with a garnishee order nisi in the Ferguson action.
- (iv) The Second Defendant provided evidence in support of the Halsbury Chambers letter to show the debt owed to it by the Claimant.
- (v) The disclosure by the Second Defendant was in accordance with its legal obligation or duty pursuant to the garnishee order nisi and not out of express malice.
- (vi) The evidence of damages suffered by the Claimant through his witness Mr. Knowles was discredited on cross examination.

**Whether the Defendant published the Halsbury Chambers letter?**

[31.] The Second Defendant did not dispute that the Halsbury Chambers letter was written or its contents. Therefore, this issue does not require determination.

[32.] The evidence showed that the Halsbury Chambers letter was written to Mr. Obie Ferguson in response to service of the garnishee proceedings on the Second Defendant and further, that the letter was not disclosed during the course of the those proceedings. Rather, the letter was exhibited in the Ferguson affidavit by Mr. Ferguson and not the Second Defendant.

[33.] However, the crux of the claim against the Second Defendant is the fact that the Halsbury Chambers letter was published during the period when the garnishee proceedings had been stayed and was therefore, not in compliance with an order of the court. Rather, he submitted that it was in contempt of the court. This was in addition to the defamatory contents of the letter.

[34.] I will discuss and address these issues later.

**Whether the Halsbury Chambers letter was defamatory?**

[35.] The Halsbury Chambers letter stated that (i) the Claimant had outstanding judgments to the Second Defendant in the sum of \$844,560.86 with a Loan Enquiry attached for the sum of \$679,977.11 in the name of Duran S Cunningham and another in the sum of \$154,583.75 in the name of Duran Cunningham (ii) that the Second Defendant was in the process of enforcing against him; and (iii) a request that the application against be withdrawn against the Second Defendant.

[36.] The Claimant relied on the following cases: **Parke B in Parmiter v Coupland** (1840) 151 ER 340; **Scott v Samson** (1882) 8 Queen's Bench Division; and **Johnson v McArchie and XYZ**. He set out the dicta of Mr. Justice Nichols relative to the definition of defamation as follows:

*"At Common Law a claimant in defamation had to prove that: (a) the Defendant had published words by making them known to at least one other person, apart from the Claimant; (b) that the words were of or concerning the Claimant; and (c) that the words were defamatory of the claimant. If these elements were proved, it was not necessary for the claimant to prove loss since damage was assumed."*

[37.] Additionally, the Second Defendant referred to the case of **Gibson v Cable Bahamas Ltd. Their Appropriate Officials, Agents and Employees** [2012] BHS J. No. 93 where Justice Neville Adderley (as then was) where he stated as follows:

“First it must be remembered that an objective test is used to determine if the contents of a publication is defamatory. As correctly referred to by Sir Michael Barnett, CJ in **Bethel v Cable Bahamas Ltd et al** Common Law and Equity Action No. 2009/CLE/GEN/01945 quoting from Peek J from *Comes v The Ten Group Pty Ltd et al* [2011] SASC 104 whether the words are defamatory must be seen from the eyes of the ordinary man:

“The meaning of words cannot be determined by evidence from the plaintiff or the Defendant, but only by the interpretation reached through the ordinary reasonable person’s understanding of the words. In determining this issue, it is vital that the tribunal of fact focuses only on the publication complained of and puts out of its mind the evidence relating to other issues of the trial...”

[38.] The Claimant has alleged that it was defamatory. He submitted that:

*“The words complained of in their natural and ordinary meaning meant and were understood to mean that he was guilty of not paying judgments obtained and issued by a court of the Bahamas and was in fact liable to be made bankrupt. Further, that he was untrustworthy and should not be trusted with money and that members of the business public should not associate with and/or do business with him.”*

[39.] While I may not agree fully with the natural and ordinary meaning proffered by the Claimant of the Halsbury Chambers letter, I do find that on the application of the objective test, that the Halsbury Chambers letter was defamatory (if untrue) of the Claimant.

**If so, are there any possible defences available?**

[40.] The Defendant set out the definition of defamation as referred to in the recent case of **Jennifer Bain v Family Guardian Insurance Company Limited** [2022] 1 BHS J. NO.15 by the Honourable Madame Justice Indra Charles (as she then was) and two of the available defences, namely (i) truth/justification, and (ii) qualified privilege.

*“163. Defamation is defined in the case of **Sim v Stretch** [1936] 2 All ER 1237 as untrue publication that would tend to lower the plaintiff [Ms. Bain] in the estimation of right thinking members of society. Libel is actionable per se. The defamation must be false. Therefore, proof that it is true by a Defendant is a full defence. Qualified privilege is also a full defence to defamation. The common law defence was explained in **David v Hosany** [2017] EWHC 2787 (QB) at paragraph 4.2:*

*“One of the most commonly used defences is that of the common-law qualified privilege. This focuses not so much on the content of the words complained as on the occasion on which they were published. Were the circumstances such that the publisher had a legal, social or moral duty or interest to make the publication, and the publishee a corresponding duty or interest to receive it? If so, the publication took place on an occasion of qualified privilege, the qualification being that the publisher must not be actuated by express malice. But unless the claimant can prove malice, the Defendant will have a complete defence.”*



164. *The test for express malice which would negate the qualified privilege defence were most succinctly set out in Horrocks v Lowe [1974] 1 All ER 662 at 669:*

*“Express malice is the term of art descriptive of such a 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 in bona fide protection of his own legitimate interests.” (emphasis added)*

[41.] Further, the defences for defamation as set out in **Halsbury’s Laws of England (2019)**, Vol.32 at para 518 as follows:

- (I) The first option is to contest that the elements of the claim are made out for example, (i) that the Defendant did not publish the words complained of; or (ii) that the words complained of did not refer to the claimant or (iii) that the words complained of did not bear any meaning defamatory of the claimant.**
- (II) A second option is for the Defendant to rely on a substantive defence peculiar to the law of defamation, as follows:**
  - (a) that the imputation conveyed by the words complained of is substantially true;
  - (b) that the words complained of were published on an occasion of absolute privilege;
  - (c) that the words complained of were published on an occasion of qualified privilege;
  - (d) that the words complained of were the honest opinion of the Defendant;
  - (e) that the words complained of were on a matter of public interest and were published in the public interest.
- (III) A third option is for the Defendant to rely on a procedural defence peculiar to the law of defamation.**
- (IV) A final option is for the Defendant to rely on one of the following tort defences:**
  - (a) that the words complained of were published with the consent of the claimant;
  - (b) accord and satisfaction;
  - (c) release;
  - (d) limitation;
  - (e) res judicata.”

[42.] There are several facts that the Court found to be proven and in some instances undisputed: (i) that the Second Defendant published the letter to Mr. Obie Ferguson; (ii) that the said letter was written in compliance with an Order of the Court; (iii) that the contents of the letter were defamatory; (iv) that the letter was exhibited to the Ferguson affidavit in proceedings unrelated to the garnishee proceedings by Mr. Ferguson; (v) the Second Defendant had a judgment against the Claimant in the sum of approximately \$500,000.

- [43.] The Second Defendant's position was that the contents of the Halsbury Chambers letter were true. I was unable to make a proper determination on this issue because the Second Defendant did not lead evidence on this. However, there were two Loan Inquiry Printouts which together totaled the sum that the Second Defendant claimed that the Claimant owed.
- [44.] However, during cross examination the Claimant admitted owing money to BarFincor, now the Second Defendant.
- [45.] In order for the Second Defendant to rely on absolute or qualified privilege the focus is not so much on the content of the words complained as on the occasion on which the words were published per **David v Hosany** [2017] EWHC 2787 QB as quoted by Justice Charles (as she then was) in the case of **Jennifer Bain v Family Guardian Insurance Company Limited**. Further, she stated: "*were the circumstances such that the publisher had a legal, social or moral duty or interest to make the publication and the publishee a corresponding duty to receive it? If so, the publication took place on an occasion of qualified privilege, the qualification being that the publisher must not be actuated by express malice. But unless the claimant can prove malice, the defendant will have a complete defence.*"
- [46.] In the case of **Elva Lindsay v Goodmans Bay Development Company Limited** [2020] 1 BHS J. No.109 the Honourable Justice Mr. Ian Winder (as then was) at paragraph 9 referred to the circumstances where a no case submission may be made by the Defendant that the plaintiff's claim is bound to fail and he set out three reasons as follows:
- (a) Even if the plaintiff's evidence is accepted, no cause of action is disclosed, or
  - (b) The plaintiff or her witnesses have been so discredited in cross-examination that their evidence cannot be believed, or
  - (c) The evidence led by the plaintiff is so unsatisfactory or unreliable that the Court should find that the burden of proof on the plaintiff has not been discharged.
- [47.] The Defendant's Counsel has submitted that the totality of the Claimant's evidence demonstrated that he has no sustainable cause of action against the Second Defendant and further, that the evidence confirmed that the Second Defendant has three available and applicable absolute defences as follows:
- (i) Truth/justification: the evidence of the Claimant under cross examination clearly indicated that the contents of the Halsbury Chambers letter and the financial data are true and applied to the Claimant, Sidney Duran Cunningham aka Duran Cunningham;
  - (ii) Absolute privilege: the contents of the letter and financial data were published on an occasion of absolute privilege, to wit, the Ferguson affidavit was published in judicial proceedings in the Supreme Court; and
  - (iii) Qualified privilege: the Halsbury Chambers letter and financial data were published under a legal duty, to wit, upon the Second Defendant being duly served with the Garnishee Order Nisi.

[48.] I accept the submissions of the Second Defendant that both (a) and (b) in the **Elva** case applies to the instant action for the following reasons:

- (i) As it relates to (a), even if I accept that the evidence of the Claimant that the Halsbury Chambers letter was defamatory, I do not accept that it was published with malice. Rather, I found that the said letter was written in pursuance of a legal duty by the Second Defendant to Mr. Ferguson despite the fact that it was written during the period when there had been a stay of the garnishee proceedings. The said letter, was unequivocal in its terms that the Second Defendant wished to be withdrawn from the garnishee proceedings. Therefore, I do not find that the “*dominate motive for the defamatory publication was the desire to injure*”.
- (ii) As it relates to (b) the Claimant’s evidence was discredited on cross examination. His evidence showed that he was known by both Sidney Cunningham and Duran Cunningham and was in fact a debtor of the Second Defendant.

[49.] Therefore, I find that the Second Defendant has two defences relative to the Halsbury Chambers letter: (i) that the “imputation conveyed by the words complained of were substantially true and (ii) that the words complained of were published on an occasion of qualified privilege and were not actuated by express malice.

[50.] Accordingly, I order as follows:

- (i) the action against the Second Defendant is dismissed;
- (ii) Costs to the Second Defendant to be paid by the Claimant to be fixed, if not otherwise agreed.
- (iii) The Second Defendant to lay over submissions not to exceed five (5) pages and to include why the matter should be certified fit for two (2) Counsel.

Dated the 26<sup>th</sup> day of June, 2024



Camille Darville Gomez  
Justice