

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(VIRTUAL)**

CLAIM NO. CV2020-02847

BETWEEN

**KEITH EDDY**

1<sup>st</sup> Claimant

**NICOLE GOPAULSINGH**

2<sup>nd</sup> Claimant

AND

**GUARDIAN MEDIA LIMITED**

1<sup>st</sup> Defendant

**CURTIS WILLIAMS**

2<sup>nd</sup> Defendant

**ROSEMARIE SANT**

3<sup>rd</sup> Defendant

Before the Honourable Mr. Justice K. Ramcharan

**Date of Delivery:** 17<sup>th</sup> September, 2020

**Appearances:** Mr. Elton Prescott, SC, Mr. Farai Hove Masaisai, *instructed* by Mr. I Jones and Mrs. J. Farah-Tull for the Claimants.

Mr. Marc Campbell *instructed* by Mr. Andre Rudder for the Defendants.

**JUDGMENT ON INTERIM APPLICATION**

## **Background**

1. This is an application to continue an injunction granted without notice on 12<sup>th</sup> September, 2020. The order restrained the Defendants from publishing further articles defamatory of the Claimants. It further enjoined them to remove certain articles from various online sources. The terms of the order are outlined as follows:
  - a. An interim injunction be and is hereby granted prohibiting the 1st, 2nd and 3rd Respondents/Defendants, whether by themselves, their servants, agents or otherwise, from further publishing or causing to be published any words, statements and/or innuendos defamatory of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants/Claimants, as complained of in the affidavits of Mr. Keith Eddy and Ms. Nicole Gopaulsingh filed and dated the 11<sup>th</sup> day of September, 2020. In particular, the printed newspaper article dated the 6<sup>th</sup> day of September 2020 entitled "Money flowing at CEPEP" and accompanying front-page headline entitled "CEPEP \$\$ Scandal", the printed newspaper front-page headline dated the 8<sup>th</sup> day of September, 2020, entitled "CEPEP probes \$.22m payout to 2 execs", digital publications made onto the 1<sup>st</sup> Respondent/Defendant's website at [www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4](http://www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4) and [www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4](http://www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4) and the 1st Respondent's/Defendant's social media page on Facebook at [www.facebook.com/TTGuardian/posts/10157780234138067](https://www.facebook.com/TTGuardian/posts/10157780234138067) and [www.facebook.com/TTGuardian/posts/10157784859693067](https://www.facebook.com/TTGuardian/posts/10157784859693067) and their Instagram profile <https://www.instagram.com/p/CE3C6pop7sg/> and <https://www.instagram.com/p/CEyoy5EJGSP/>;

- b. An interim injunction be and is hereby granted prohibiting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Defendants, whether by themselves, their servants, agents or otherwise, from further publishing or causing to be published any words, statements and/or innuendos that are in breach of and/or a misuse of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants'/Claimants' private and/or confidential information, as complained of within their respective affidavits in support of this application, both dated the 11<sup>th</sup> day of September, 2020;
- c. An interim injunction be and is hereby granted compelling the 1<sup>st</sup> Respondent to remove all private and confidential information of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants/Claimants in particular their private home addresses, signatures and contracts of employment from all of their online and social media platforms, namely the publications onto their Facebook page at [www.facebook.com/TTGuardian/posts/10157780234138067](http://www.facebook.com/TTGuardian/posts/10157780234138067) and [www.facebook.com/TTGuardian/posts/10157784859693067](http://www.facebook.com/TTGuardian/posts/10157784859693067), Instagram profile at <https://www.instagram.com/p/CE3C6pop7sg/> and <https://www.instagram.com/p/CEyoy5EJGSP/>, and their website at [www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4](http://www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4) and [www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4](http://www.guardian.co.tt/news/money-flowing-at-cepep-6.2.1200981.5da1dc4de4), as complained of, within the 1<sup>st</sup> and 2<sup>nd</sup> Applicants'/Claimants' affidavits dated the 11<sup>th</sup> day of September, 2020;
- d. An interim injunction compelling the 1<sup>st</sup> Respondent to remove the defamatory articles and headlines dated the 6<sup>th</sup> and 8<sup>th</sup> days of September, 2020, as complained of in the affidavits of Mr. Keith Eddy and Ms. Nicole

Gopaulsingh filed and dated the 11<sup>th</sup> day of September, 2020, from all of its online and social media platforms.

### **Background Facts**

2. The Claimants are respectively the Chief Executive Officer and Corporate Secretary/Head Legal of the CEPEP Company Limited (CEPEP), a special purpose state enterprise whose main function is to “develop, implement and manage programmes that protect, enhance and beautify the environment in service areas known as environmental work areas”<sup>1</sup>. It operates under the auspices of the Ministry of Local Government and Rural Development (formerly the Ministry of Rural Development and Local Government).
  
3. The 1<sup>st</sup> Defendant is the owner of the “Trinidad Guardian” Newspaper (“the Guardian”), a daily news publication of national circulation throughout Trinidad and Tobago. The Guardian publishes its stories by means of (a) printed newspapers which are sold throughout the country; (b) an online version of the printed newspaper which is available to those who subscribe to it (the e-paper); (c) the reproduction of articles contained in the printed newspaper as online articles on its website<sup>2</sup>; and (d) posting links to the website articles on its various social media platforms<sup>3</sup>. The 2<sup>nd</sup> Defendant is the lead business editor of the Guardian and the 3<sup>rd</sup> Defendant is the Managing Editor of the Guardian.

---

<sup>1</sup> CEPEP website

<sup>2</sup> [www.guardian.co.tt](http://www.guardian.co.tt)

<sup>3</sup> Facebook: TTGuardian  
Instagram: @TTGuardian  
Twitter: @GuardianTT

4. Starting 6<sup>th</sup> September, 2020, the 1<sup>st</sup> Defendant published articles which referenced CEPEP and made certain allegations with respect to the Claimants. The articles were published in the printed and e-paper versions of the Guardian, and the articles were reproduced on the website. Links to the various articles were posted to the Guardian Facebook page and pictures of the front page of the 2 issues of the printed paper, which contained references to the articles were posted on the Guardian Instagram page.

#### **The First Article**

5. The first article was published on 6<sup>th</sup> September 2020. That article bore the headline “Money Flowing at CEPEP”. A significant portion of the front page of the printed (and e-paper) issue of the Guardian referenced the inside article and read “CEPEP \$\$ Scandal” in large print and in bullet points stated “Salary hike and Luxury Car for CEO”; “Upgrades for Senior Managers Just Before Elections”; and “Chairman denies knowledge of salary changes”.
6. The Article itself states can be divided into 4 sections.
  - a. It alleges that the Claimants were the beneficiaries of salary increases while the country was in the midst of a financial crisis. Reference was made to a memorandum penned by the 2<sup>nd</sup> Claimant to the HR Department of CEPEP advising them that the Board of Directors had approved *inter alia*, salary increases for the Claimants.

- b. It recounts conversations that the 2<sup>nd</sup> Defendant had with the 1<sup>st</sup> Claimant and the Chairman of the Board of CEPEP relative to the salary increases. The 1<sup>st</sup> Claimant reportedly advised the 2<sup>nd</sup> Defendant to speak with the Chairman. The Chairman told the 2<sup>nd</sup> Defendant that she was unaware of any salary increases for the Claimants, that there was a recommendation or proposal, but that it had not gone anywhere. The 2<sup>nd</sup> Defendant advised the Chairman that he had in his possession copies of signed contracts.
  - c. It recounts unsuccessful attempts to contact the Line Minister and raises allegations that have been made against the Minister of interference in the operations of CEPEP, which the Minister has denied.
  - d. It states that mere weeks before the General Election held on 10<sup>th</sup> August, 2020, the 1<sup>st</sup> Claimant signed off on several extensions of contracts for officers whose contracts were not yet up for renewal.
7. Following publication of the first article on 6<sup>th</sup> September, 2020, CEPEP issued a press release denying that the Claimants had received any salary increases. It acknowledged that recommendations had been made in November, 2019, for the increases, but that at present they were awaiting approval from the HR committee and the Chief Personnel Officer (CPO). It called for a retraction of the article by the Defendant. On the same date a letter was sent from the Claimants' Attorneys at Law to the Managing Director of the 1<sup>st</sup> Defendant calling on it to remove the offending article from its online publications. It further stated that an in-depth letter would be issued pursuant to the Pre-Action Protocol for Defamation (the pre-action protocol letter) by 8<sup>th</sup> September, 2020.

## **The Second Article**

8. The 1<sup>st</sup> Defendant declined to remove the article, and instead, on 8<sup>th</sup> September, 2020 published a second article under the hand of the 2<sup>nd</sup> Defendant with the headline “CEPEP Probes \$.22m Payout to 2 Execs”. The front page of the printed (and e-paper) of the Guardian also devoted a significant portion of the front page to the story with the headline “CEPEP Probes \$.22m Payout” and with the bullet points “2 Execs get tidy sums as increments”; “Board never gave approval to disburse funds”; and “Queries over who signed arrangement”. The article repeats many of the matters raised in the first article, but further states that on 14<sup>th</sup> August, 2020, payments totalling about \$226,000 had been paid to the Claimants as arrears of earnings for their new salaries from November, 2019 and that CEPEP had launched an internal investigation to understand how payments had been made. It further stated that the 2<sup>nd</sup> Defendant had contacted the line Minister and the 1<sup>st</sup> Claimant, but neither wished to speak on record, however, it was revealed to the 2<sup>nd</sup> Defendant that the payments had been reversed. Reference was also made to the press release by CEPEP. The Front Page of the Guardian as well as the second article were accompanied by images which revealed the home addresses of the Claimants, particulars as to their salaries as well as their signatures.

## **The Third Article**

9. Following the publication of this article, CEPEP again issued a media release indicating that the Claimants were not the recipients of the monies cited in the second article, that an accounting error had been made by the Automated Clearing House, which was subsequently rectified before the publication of the first article. Subsequent to this,

the Guardian published a third article in which the contents of the second Media Release are noted. There is no byline in the article to indicate its authorship, and it was not referenced on the front page of the printed (or e-paper) edition of the Guardian.

10. The pre-action protocol letter was sent and responded to by the Attorneys at Law for the Defendants. In short they rejected the Claimants' contention that the articles were defamatory of the Claimants setting up in essence defences of justification and responsible journalism (the Reynold's Defence). They only agreed to remove all images which displayed the Claimants addresses. The Claimants thereafter approached the court via this application for injunctive relief and an ex parte order was given on 12<sup>th</sup> September, 2020, preventing further publication of defamatory articles about the Claimants, and ordering the removal of the first and second articles and the Front Page references thereto from the Guardians online and social media presences.

### **The Evidence**

11. Several affidavits were filed in respect of this application. At the time that the original order was made, before the court was an affidavit each by the Claimants. Later, the second Claimant filed a supplemental affidavit and the Chairman of CEPEP, Mrs. Marilyn Michael. Finally, the Claimants instructing Attorney at Law filed an affidavit and the 2<sup>nd</sup> Claimant filed a further supplemental affidavit after the hearing of arguments, for the sole purpose of annexing a letter from the bank which she had



requested. On the Defendants' part, the 1<sup>st</sup> Defendant filed an affidavit, the 2<sup>nd</sup> Defendant filed 2 affidavits, and the Instructing Attorney at Law filed an affidavit.

12. For the most part, and insofar as their contents are relevant to this application, the affidavits repeated the facts set out above. Further to these, the Claimants set out the circumstances in which they say their increases in salaries were approved by CEPEP's board in November, 2019. The 1<sup>st</sup> Claimant outlines the procedure with respect to the Automated Clearing House and indicates that errors are routinely made, but are usually swiftly rectified. He deposes that on 18<sup>th</sup> August, 2020, he realised that payments were erroneously made to the 2<sup>nd</sup> Claimant and himself, and by the following day, he had issued a letter to rectify the matter. He claimed that there was no scandal. He makes note of some of the comments under the Facebook post of the articles.

13. In her affidavits, the 2<sup>nd</sup> Claimant admits that she penned the November, 2019 memorandum, but it was part of her duties as corporate secretary to inform as to the decisions of the Board. She stated that she had noticed that the monies had been paid into her account erroneously, and that once this error was discovered, instructions were given to have the payments reversed. Upon checking sometime later, she saw that she no longer had access to the funds. However, in light of questions received by 1<sup>st</sup> Claimant from the 2<sup>nd</sup> Defendant, she made checks again on 12<sup>th</sup> September, 2020 and saw that the monies had been redeposited into her account. This she said would be the subject of a police report and further undertook to provide the court with copies of her bank statements which was provided by her final supplemental affidavit.

She stated that she believed that there was a conspiracy between rogue elements in CEPEP and all of the Defendants. She however, provided no evidence to substantiate this conspiracy on the part of any of the Defendants.

14. In her second supplemental affidavit filed shortly before this decision, the 2<sup>nd</sup> Claimant stated that she was advised by her bank that the funds had been deposited into her account, but that on receipt of an email of the error, the funds were placed on indefinite hold, and released on 10<sup>th</sup> September to be returned to CEPEP. The Defendants submitted that this was a discrepancy and material non-disclosure by the 2<sup>nd</sup> Claimant in that she had previously deposed that the funds had been returned to CEPEP since the 1<sup>st</sup> September.

15. The Court is in total disagreement with the Defendants' submissions. It is to be noted that the 2<sup>nd</sup> Claimant is not responsible for the mechanics of returning the money. She makes it clear in her supplemental affidavit that it was CEPEP who advised her that the monies had been returned. What this actually means is open to interpretation, but what is clear is that by 28<sup>th</sup> August, 2020, steps had been taken to have the monies returned to CEPEP, and from that date she had no access to those funds, until 10<sup>th</sup> September 2020. I do not see that the Second Claimant has made any material non-disclosure at all in this matter, as it would appear to her that she had no access to the funds, and then she had access to the funds again, which could be interpreted as the money being redeposited into her account.

16. Marilyn Michael deposed to the process by which the salaries were approved, but stated that they had not been finalised as the board was awaiting legal advice as to whether the proposal required cabinet approval. She stated that her comments to the 2<sup>nd</sup> Defendant were misconstrued and that there is no scandal, nor is there any probe into either of the Claimants. She said that she felt uncomfortable that the conversation had been recorded without her knowledge beforehand.
  
17. The Instructing Attorney at Law deposed to the fact that despite the Court's order, the front page of the e-paper still remained. She further annexed a response to questions posed to the 1<sup>st</sup> Claimant by the 2<sup>nd</sup> Defendant on the 12<sup>th</sup> September, 2020.
  
18. For the Defendants, the 3<sup>rd</sup> Defendant indicated that measures that had been put in place to remove the impugned articles and comments from the 1<sup>st</sup> Defendant's online properties. She deposed that it was felt that it was easier to remove the entire article from the Facebook and Instagram posts than to attempt to vet each comment. She also deposed that the relevant pages from the e-paper had also been removed. She further stated that the Defendants are willing to have this action expedited.
  
19. The Instructing Attorney at Law for the Claimant referenced and annexed an article published by a local media organisation which spoke about the injunction.
  
20. The 2<sup>nd</sup> Defendant recounted briefly the documents in his possession which he had prior to the publication of the article. He recounted that the day before the publication of the first article, he spoke to the 1<sup>st</sup> Claimant and the Chairman of CEPEP

and what they told him (which accords with what is stated in the article). He further states that after the publication of the first article, he attempted to contact the 1<sup>st</sup> Claimant again as he intended to have the second article published, but was unable to do so. He was however, able to contact the Line Minister, who advised him that he would get the 1<sup>st</sup> Claimant to contact him.

21. The 1<sup>st</sup> Claimant did contact him later on. He advised the 1<sup>st</sup> Claimant that he intended to write the follow-up article about the payments made into the Claimants' accounts, and the 1<sup>st</sup> Claimant offered an off-the-record conversation. The 1<sup>st</sup> Claimant implored him not to publish the story as the monies had been repaid, and referenced their communal alma mater. He advised the 1<sup>st</sup> Claimant that this notwithstanding, he was going to publish the second article. He referenced the off-the-record statement by the 1<sup>st</sup> Claimant that the payment had been reversed in that article, though he states he was never officially informed of this, or that the payment was due to an error. He further claims ownership of the third article, though as noted, unlike the first two articles, there is no byline to indicate authorship.

22. He further stated that the injunction prevented the publication of a fourth article which he had intended to have published on 13<sup>th</sup> September, 2020, and that the publication of the injunction by the Claimants to all media houses could cause the 1<sup>st</sup> Defendant to lose its competitive advantage with respect to the story.

### The Test to be Applied in Granting Interim Injunctions in Defamation Claims.

23. Up until 2019, the law would have militated against the granting of an interim injunction with respect to defamation claims. That is because, in this jurisdiction, as in most common law jurisdictions, the rule in *Bonnard v Perryman*<sup>4</sup> would have applied. That rule simply states that no interlocutory injunction ought to be granted in defamation cases where a Defendant swears an ability to justify the defamatory statement, unless the Court was satisfied that the defence had no chance of success. The rule, while seemingly limited to a defence of justification, was expanded in *Green v Associated Newspapers Ltd*<sup>5</sup> to include all defences. Once therefore, a Defendant could prove that there was a defence that was not doomed to failure, the Court should not grant an interim injunction preventing further publication. *Green v Associated Newspapers Ltd*, made it clear that the normal criteria in determining whether to grant interim relief as outlined in *American Cyanamid v Ethicon*<sup>6</sup> did not apply to the grant of interim relief in Defamation cases.

24. The application of *Bonnard v Perryman* in this jurisdiction received detailed consideration in the case of *Southern Medical Clinic Ltd v Rajkumar*<sup>7</sup>. In that case, the Defendant had published several posts on her personal Facebook page alleging negligence against the Claimants in relation to the functioning of medical equipment used to treat her and encouraging others to boycott the 1<sup>st</sup> Claimant. The Claimants applied to the Court for an interim injunction compelling the Defendant to remove the

---

<sup>4</sup> [1891] 2 Ch 269

<sup>5</sup> [2005] Q.B. 972

<sup>6</sup> [1975] A.C. 396

<sup>7</sup> Civ App S062 of 2019

posts. The judge at first instance refused to grant the injunctions on the basis that the rule in *Bonnard v Perryman* still applied in this jurisdiction.

25. The Court of Appeal took the opportunity to consider whether it was appropriate for the rule to continue to apply in Trinidad and Tobago. It considered firstly, the rationale behind the rule itself and noted that the rationale had been justified for 3 reasons:

- a. The importance the court attaches to the freedom of speech and the reluctance to interfere with that right prior to trial as the Claimant would be entitled to relief only after the trial.
- b. A judge must not usurp the function of the jury (defamation cases were triable by judge and jury up to 2013 in England).
- c. Until there has been disclosure and cross-examination, a court cannot safely proceed on the basis that what the defendants wish to say is not true, and the court has no business in stopping them from saying it, if the statements may be true or not.<sup>8</sup>

26. However, the court noted that the rule limited the discretion of the trial judge, precluded the analysis of the balance of justice in individual cases, did not allow for a balancing of competing fundamental rights. Once a defence is raised, the injunction must be granted.

---

<sup>8</sup> *Southern Medical Clinic v Rajkumar* para 88

27. The Court also noted that with the development of the Reynold's defence, a defendant could succeed in a claim even though the publication was untrue and defamatory, once the publication was responsible and in the public interest.

28. After careful consideration of the rule, the Court held that it no longer applied in Trinidad and Tobago. It was stated that in determining whether an interim injunction ought to be granted, a trial judge should consider the balance of justice as outlined by the Court of appeal in *Jetpak Services Ltd v BWIA International Ltd*<sup>9</sup>. Jones, JA postulated how a judge should approach the matter in the following terms:

After ascertaining that there a case to be tried, and that there is a need to consider an injunction (that is to say that the publication was not a fleeting one), paramount consideration must be given to the freedom of expression and freedom of the press rights guaranteed under section 4 of the Constitution.

Where a competing right arises, such as the right to private and family life, the Court must also take that into consideration and conduct a balancing exercise between the 2 competing rights. The Court must also consider that at this stage there has been no determination on the question of whether the statement is in fact defamatory, which can only be achieved at trial.

Finally, she counselled that thought must be given to giving directions for an early trial.

---

<sup>9</sup> (1998) 55 WIR 362

29. For his part, Rajkumar, JA, who delivered the leading judgment of the Court stated that a court would have to take all necessary measures into account. They would include:

- a. **“The paramount importance of freedom of expression in a democratic society**
- b. **The right to protection of individual reputation**
- c. **Though not applicable to relations between individuals, the recognition of the importance in this democratic society of the rights to freedom of expression, to freedom of the press and (c) the right of the individual to respect for his private and family life, as illustrative of the rights considered sufficiently important to be reflected in our constitution.**
- d. **The possibility in individual cases, that for example, where justification is raised, though a statement is not “clearly untrue”, the likelihood of it being justifiable on the material put forward by the publisher.**
- e. **The possibility that a publisher of a defamatory statement... may not have sufficient assets to satisfy any substantial award of damages after trial necessitated by a decimated reputation.**
- f. **A Court liberated from the *Bonnard v Perryman* rule would not need to be hampered by any illusory consideration or fiction that a non-existent jury was (a) separate fact finder which had not yet considered the issue”<sup>10</sup>**

---

<sup>10</sup> At paragraph 143



30. On that basis, in determining whether to continue the injunction, this court must consider all the above.

**Application of the Test.**

31. The Defendants in their affidavits and response to the pre-action protocol letter have cited 3 defences up on which they presumably intend to reply, (a) fair comment (honest comment per *Joseph v Spiller*<sup>11</sup>); (b) justification and (c) Reynold's Privilege.

32. The defence of fair (honest) comment received extensive consideration in *Joseph v Spiller*, which stated the criteria in establishing the defence as follows:

- a. **"The Statement in issue is comment and not fact;**
- b. **The matter in respect of which the comment is made is a matter of public interest;**
- c. **Where that matter consists of facts alleged to have occurred, the facts are true;**
- d. **The facts are "fair"**<sup>12</sup>
- e. **The statement is not made maliciously"**

33. Further, the Court noted that in general, the facts upon which the comment is made must identified by the comment, or generally available to the public.<sup>13</sup>

---

<sup>11</sup> [2010] UKSC 53

<sup>12</sup> At paragraph 83

<sup>13</sup> Paragraphs 88 – 104.

34. Examining the publications in question, can it be said that any of the articles complained of would qualify as honest comment? Attorney at Law for the Defendants did not reveal A perusal of the articles and the front pages reveal that only the matter that could really be considered a comment is the description of the situation at CEPEP as a scandal. This could be considered either a comment or an assertion of fact, and whether it is would be something to be determined at trial. Looking at the other factors, it is certainly based on some facts which have been accepted by both sides, and again, the truth of the facts must be determined at trial. What can be said at this stage is that there is no evidence that anything the comment (if it is indeed a comment) was patently untrue. On the question of malice, in honest comment, malice means that the commenter is expressing his honest opinion, and not one that was dishonest, or motivated by spite or ill-will. Although the Second Claimant has averred a belief that there is a conspiracy between persons at CEPEP and the Defendants, she has not, at this stage given any evidence to support that view.

35. On the question of public interest, the Claimants sought to underplay the public interest of the matter given the fact that the approvals for the increases were made since November, 2019, before the current circumstances and further that the 2<sup>nd</sup> Defendant admitted that financial considerations were behind the story.

36. I am of the view that the issue is at the very least *prima facie* of a public interest, as on the face of it, the payment of monies and salaries of those employed by state enterprises, who are paid by the tax payer (as the Claimants are) is in the public interest. Further, the mere fact that a publication would be beneficial to the financial

bottom line of the publisher does not necessarily preclude it from being in the public interest.

37. In the circumstances, the court is of the view that there is a defence of honest comment that can be raised at trial, and which is not doomed to fail.

38. On the question of justification, it is to be noted that the Claimants actually dispute relatively few of the facts raised in the article. The issues in dispute are as follows:

- a. Is there a scandal at CEPEP?
- b. Were the Claimants the recipients of monies that represented “increments” for the new salaries which had been recommended by the Board of CEPEP in November, 2019?
- c. Was there an investigation into how monies were deposited into the Claimants’ accounts?

39. It is to be noted that the third article recognised that CEPEP indicated that the monies paid to the Claimants as “increments” on 14<sup>th</sup> August, 2020, were so paid in error and had been returned. The Court is of the view that at this stage, for the most part, the defence of justification is not doomed to failure except for the allegation that there was an investigation into the payments. The 2<sup>nd</sup> Defendant did not, either in his article, or in his affidavits provide a scintilla of evidence that there was an investigation ongoing. As Rajkumar, JA noted in *Southern Medical Clinic Ltd v Rajkumar*: **“However, mere allegations or accusations without a scintilla of material to substantiate them, even though it is contended by a defendant that they will be**

**justified at trial, cannot fall into any special category so as to exempt them from appropriate scrutiny at a pretrial stage.”<sup>14</sup> Further, he stated: “On a balance of justice approach, a court would be permitted to consider the harm done to the claimant associated with the refusal of a pretrial injunction to restrain a grave defamatory allegation which has little evidential foundation at that stage, without necessarily needing to await trial and await cross-examination of witnesses.”<sup>15</sup>.**

40. In order to satisfy the Reynold’s defence, a defendant must show that the matter is in the public interest, and that he exercised responsible journalism in publishing the article. Again, it is not the duty of the court to ascertain at this stage whether there has been responsible journalism, but whether at this stage, the defence is doomed to fail.

41. On the uncontroverted evidence, the following is revealed:

- a. The 2<sup>nd</sup> Defendant sought comment from the 1<sup>st</sup> Claimant who referred him to the Chairman.
- b. The conversation between the Chairman and the 2<sup>nd</sup> Defendant was outlined in the article.
- c. The 2<sup>nd</sup> Defendant was in receipt of documents from persons within CEPEP.
- d. The 2<sup>nd</sup> Defendant gave the contents of the off the record conversation with the 1<sup>st</sup> Claimant insofar as he stated that the monies were repaid.

---

<sup>14</sup> At paragraph 105

<sup>15</sup> At paragraph 107

- e. The 1<sup>st</sup> Defendant caused the contents of the second CEPEP news release with respect to the accounting error and the repayment of the money to be published (purportedly under the hand of the 2<sup>nd</sup> Defendant)
- f. The 2<sup>nd</sup> Defendant was never provided with the letter dated 19<sup>th</sup> August, 2019, seeking the return of the money prior to these proceedings.

42. The Claimants submitted that there could not be responsible journalism because the 2<sup>nd</sup> Claimant was not contacted for comment. However, it is to be noted that the law does not make seeking comment from the Claimant a necessity and it will be a question to be determined on trial whether the 2<sup>nd</sup> Defendant ought to have sought comment from the 2<sup>nd</sup> Claimant in light of the information he had, and the other communication he had with the Chairman and the 1<sup>st</sup> Claimant.

43. With respect to the question of whether the matter is in the public interest, as noted above, at this stage, the matter is *prima facie* in the public interest. In the circumstances, the Reynold's defence is not doomed to fail.

44. On a general note on the question of malice, the Claimants have asserted that there is a conspiracy between the Defendants and elements within CEPEP. This was averred to by the 2<sup>nd</sup> Defendant and was raised in pre-action correspondence. However, no evidence of such has been provided at all. In fact, at present, there is no evidence from which the court could make a finding of malice on the part of any of the Defendants.

45. Having considered the various defences, it is now left to the court to engage in the exercise of finding where the balance of justice lies.

46. As the court noted in *Southern Medical Clinic v Rajkumar*, paramount consideration must be given to the freedom of expression as guaranteed under the constitution. This must be counter-balanced by the right to reputation, which Rajkumar, JA was willing to consider fell in the right to privacy and family life.

47. The Defendant sought to say that the fact that the order was granted was published in an article, and that the 1<sup>st</sup> Defendant sought to lose revenue on the inability to publish further articles. I do not agree. Firstly, a reader of these articles would understand that there was no finding that the Defendants had defamed the Claimants, but that the order was merely interim, and secondly, this is not a story which has an exceptionally short shelf life. If the court were to grant interim injunction, yet determine after trial that there was no defamation, then the subject matter, that is to say, the propriety of expenditure at a State Enterprise would still be germane, relevant, and in the public interest. These do not counter the possible loss of reputation that the Claimants would suffer.

48. Counsel for the defendant noted that the Claimants would be entitled to damages and it would be known that they were the beneficiaries of a judgement that they were defamed. Again, there are times where no amount of damages could compensate for the loss of reputation that one suffers as the result of being defamed. Further, the court takes judicial notice of the fact that while many defaming articles and headlines

are given prominence in publications, their retractions are usually obscure with no reference in the headline as to whom the retraction refers.

49. Having said that, the court is of the view that the balance of justice lies in the discharge of the injunctions with the exceptions outlined below. The Court has come to this view when taking into account the balance of the freedom of expression and the right to privacy and family life. It is to be noted that the articles in question have put the point of view of the Claimants and have stated that CEPEP has indicated that the monies have been returned. It is further noted that the actual facts and issues between the parties are quite narrow, as noted above. In the circumstances, the balance must come down in favour of upholding the freedom of expression and freedom of the press.

50. There are two areas however, where the court is of the view that restraint is justified. Firstly, there is the question of images in which the personal information of the Claimants were contained. It is to be noted that the Defendant had agreed to remove those images, and rightly so. They definitely flew in the face of the Claimants' right to privacy, and were completely unnecessary to the story. I exempt from this the salary and benefits payable to the Claimants. While this is technically personal information, it is not unusual for the salaries of public officials as well as employees and officials of state enterprises to be in the public domain. It is therefore not confidential personal information.

51. Secondly, there is the reference to an investigation being conducted by CEPEP against the Claimants. There is no evidence at all of any investigation or probe into how the moneys were deposited into the Claimants' accounts. It is the Court's view that no defence of justification or responsible journalism or honest comment could be sustained at trial. However, the Court is not of the view that the article itself ought to be removed from the or the headline above it, in the e-paper. The article on the whole only makes passing reference to any investigation, further, it is likely that anyone who would have accessed the e-paper would have done so already, the article being over a week old. However, the court is ordering that the front page of the e-paper, which has the headline announcing the probe, with no immediate reference to the inside article should be removed, as there is no scintilla of evidence that there is any investigation or, if the images and references to the investigation by CEPEP are removed, then the front page can remain.

52. Further, the Court orders that if online access to the article is restored, the headline there should be changed to remove any reference to a probe or investigation, further, as it is possible to edit these articles, it would be easy to remove the passing reference to the purported investigation. Unlike the e-paper, the Court takes judicial notice that many website articles often are highlighted as "most read" or "related". If the Defendants intend to pursue this series of articles, then there is all likelihood that the related articles may be promoted alongside new ones.

53. Of course, further publication of the allegation that CEPEP is probing how the money was paid into the accounts of the Claimants is prohibited.



54. It is to be noted that there is nothing in this order which prevents the Defendants from continuing to publish the series of articles intended, once the limitations as outlined in the court's order are maintained.

55. On the question of costs, in light of the manner in which the court has ruled, that is to say, some aspects of the injunction being maintained, and some being discharged, the Court is of the view that the appropriate order for costs would be costs in the cause to be assessed by a Registrar if not agreed. Should the Claimant be successful, the Costs are certified fit for Senior Counsel.

### **Order**

56. In the circumstances, the order of the Court is as follows:

- a. The Order granted on the 12<sup>th</sup> September, 2020, is hereby discharged.
- b. The Defendants whether by themselves, their servants and/or agents are restrained from publishing any of the Claimants personal information or any images containing the personal information of the Claimants, with the exception of the salaries and benefits payable to the Claimants by CEPEP, until the trial of this action or until further order.
- c. The Defendants are to remove and not repost the front page of the e-paper of the Trinidad Guardian Newspaper published on 8<sup>th</sup> September, 2020, until the trial of this action or until further order.
- d. The Defendants are restrained from posting or publishing any photograph or digital representation of the front page of the Trinidad Guardian published on the 8<sup>th</sup> September, 2020, until the trial of this action or until further order.

- e. The Defendants are restrained from publishing or republishing any allegation that there is a probe or investigation by CEPEP into how monies, representing arrears of increases in salaries and benefits were paid into the bank accounts of the Claimants in or around 14<sup>th</sup> August, 2020, with the exception of the article and headline on page 5 of the e-paper of the Trinidad Guardian published on 8<sup>th</sup> September, 2020, until the trial of this action or until further order.
- f. The Costs of this application are costs in the Cause, certified fit for Senior Counsel if the Claimant is successful in the Cause.

**KEVIN RAMCHARAN  
JUDGE**