

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2012-02083**

**Between**

**EMILE ELIAS**

**NH INTERNATIONAL (CARIBBEAN) LTD**

**CLAIMANTS**

**AND**

**EUGENE REYNALD**

**DEFENDANT**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

Appearances:

Mr Shiv Sharma for the Claimants

The Defendant in Person unrepresented

Dated: 2 July 2014

**JUDGMENT**

1. The first claimant (Mr Elias) is the executive chairman of the second claimant (NH), which is a limited liability company carrying on the business of general contractors in construction projects in Trinidad and Tobago and regionally.

2. The defendant says he is a project/ construction manager and has been a public commentator in matters related to construction for more than 30 years.
3. This claim arises from a publication by the defendant on 15 January 2012 on the internet website 'Caribbean Talk'. The claimants have claimed damages including aggravated damages from the defendant in relation to the publication on the basis that it defamed the claimants.

### ***Procedural History***

4. The claim and statement of case were filed on 23 May 2012. The defendant decided to represent himself without the benefit of having an attorney-at-law. The defendant filed his 'statement of defence' on 1 October 2012. There was a reply by the claimants on 20 May 2013. A witness statement by the defendant was filed on 21 October 2013. The first claimant filed his witness statement on 23 October 2013.
5. This matter was originally docketed to another judge who recused herself. The defendant has represented himself at all times. On 27 March 2013, at the first rescheduled CMC before me, the defendant indicated that he had consulted two attorneys who did not want to act for him because of who the claimants were, and that he would therefore represent himself. I took the time to explain to the defendant the benefit of having legal representation and the process of litigation.
6. A number of hearings were then held between then and the pre-trial review. At each stage I tried to explain the process to the defendant. On 30 October 2013, at the pre-trial review, directions were given for trial and for the filing of the claimants' evidential objections.
7. On the day of trial, 25 February 2014, the defendant did not appear and there was no excuse tendered for his absence. At the previous hearing I had reminded him of the trial

date and the defendant made a note of it. An attempt was made to contact the defendant at the phone number he provided and there was no answer. The matter was stood down and the defendant did not appear. There being no attendance by the defendant and no excuse tendered I proceeded with the trial and his witness statement was consequently struck out. Mr Elias adopted his witness statement as his evidence in chief.

8. By letter of 26 February 2014, the defendant wrote an email to my Judicial Support Officer apologising for his absence explaining that he wrote the date as the 25<sup>th</sup> but somehow confined it to memory as the 26<sup>th</sup>. This in my view was not a proper basis to have the trial reconvened.

### ***The Publication***

9. The words complained of, which the defendant does not dispute, are reproduced in full at paragraph 4 of the statement of case (also at paragraph 31, page 8 of claimant's submissions). They are as follows:

*Even as the country awaits the outcome of an investigation by the Integrity Commission, trouble is again brewing in the fiefdom of Jearlean John and of course in the absence of a competent, independent and uncorrupted media – I am left to comment.*

*There are several issues but in this instance my focus is on those surrounding the letting of the contract for the fit out works to the Customs and Excise (C&E) Building.*

*As we all know NH International were the first contractors on the Government Campus when in April 2004 they were awarded the contract to carry out the base building works for the Customs and Excise Building.*

***They are still on site today and have been arguing for rights to the contract for fitting out that Building.** The fit out works then were reasonably expected to cost around \$100m.*

*In such a situation it is reasonable to assume that there are many festering and unresolved issues between NH and UDeCOTT that could certainly amount to tens of millions of dollars. These issues have to be resolved now and if they are not then lengthy Arbitration/Litigation could ensue.*

*Bids invited recently for the fit out works placed NH international third among those received and some \$10 million below [read “above”] the lowest bidder.*

*The parties reported as advising Jearlean and UDeCOTT are Hill International and a Firm which involves Winston Riley who is a friend and colleague of Emile Elias of long standing. In evaluating the bids received UDeCOTT has to find some way to bypass the two lowest bidders and give NH the project – and at the same time settle all outstanding issues related to the contract for the base building works.*

*If they fail to achieve these ends then they have to find some way to have NH agree to hand over the site – before an award is made to any contractor other than NH. This means settling the outstanding issues with NH – and if this is not done already done it will be something of a challenge for it to be done now. Settling these issues can be done in many ways and it would be interesting to see the one Cabinet and those in UDeCOTT selects and the final cost for the C&E building works.*

*Rudi, Jearlean, Eli Zakoor and Damina Hares have a problem and given their form and ineptitude on the project to relocate Parliament last year we can only be in for more of the same. (Emphasis supplied).*

10. The issues are squarely whether these words are defamatory of the claimants and if so what damages are they entitled to.

### ***The Evidence***

11. The defendant’s witness statement having been struck out, the only evidence was that of the first claimant.

12. Mr Elias says that NH was awarded the contract with Udecott for the Government Campus Plaza Customs and Excise (C&E) Building on 7 March 2005. Turner Alpha Ltd was the initial project manager under the contract and NH was given possession of the site to perform works under the contract and was required to secure the site.
13. He says that it is not true that at the time of the defendant's publication that NH was still in possession of the site.
14. He says since 28 January 2008, NH had re-delivered partial possession of the site to Udecott, and Turner Alpha issued a Certificate of Partial Possession in respect of it on 28 April 2008 (See EPE1). He says NH fully re-delivered possession of the site from 3 November 2008 as evidenced by Turner Alpha's letter to NH dated 3 November 2008 (See EPE2). This letter recorded arrangements to hand over keys to the employer (Udecott) to allow the take-over of security and enquired of NH as to the final clean of the interior and exterior of the building.
15. Mr Elias says that NH and Udecott had settled all matters concerning the contract as evidenced by the Final Account Summary by EQS Ltd dated 16 November 2011 (and confirmed by Udecott's letter to the Defendant dated 4 September 2012). He says no final Completion Certificate could have been issued at the time as Turner Alpha had ceased performing functions regarding the contract since 31 January 2011. It was only when CEP Ltd was appointed as the new project manager that it issued the certificate in June 2012. (See EPE3).
16. The fit out works referred to in the defendant's article was a separate aspect of the C&E project related to the outfitting of the building for which NH submitted a bid in response to a publicly advertised tender by Udecott. As such NH never sought to "argue" for the contract as the defendant put it. Further, in relation to the tendering process, he says there is often no obligation on the entity inviting the tender to choose the lowest bid submitted.

17. He says Winston Riley has been a colleague for about 30 years. He denies any knowledge as to whether any firm Mr Riley is involved in advising Udecott. Further he says that at no point did he or anyone from NH seek to influence or communicate with Winston Riley in relation to the award of the contract for the fit out works.

18. This witness statement was unchallenged and I accepted the evidence in it.

### *The Law*

19. The principles to determine defamatory meaning are well settled – see **Bonnick v Morris** [2003] 1 AC 300 and **Lewis v Daily Telegraph Ltd** [1964] AC 234. The question essentially is what the words, in their ordinary and natural sense, convey to the ordinary person, and whether that meaning is defamatory. A defamatory statement or imputation has been held to be one to the claimant’s discredit; or tends to lower him in the estimation of right-thinking members of society generally; or causes him to be shunned or avoided; or exposes him to hatred, contempt or ridicule: see **Gatley on Libel and Slander 12th edition, para. 2.1. page 32.**

### *Claimants’ Submissions*

20. The claimants say the publication as a whole in its natural and ordinary sense meant and would have been understood by the ordinary reader to mean that:

- i. That NH was still on the C&E building site up to the date of publication and holding on to it to gain a material advantage in the bidding process to obtain a contract for the fitting out of that building.
- ii. There are or it could be assumed there are many unresolved issues between NH and Udecott that could certainly amount to tens of millions of dollars.

- iii. NH would use the aforementioned circumstances to act improperly by exerting pressure on Udecott to award the fitting out contract to NH.
- iv. NH and Mr Elias would seek to use their relationships with one of the advisers to Udecott on the award of the said contract to obtain an unfair advantage in the evaluation process over others.
- v. NH and Mr Elias would act dishonestly and conspire with Udecott to have the fit out works contract awarded to it.

21. Counsel for the claimants submits that the reader is invited to infer, among other things, that there were disputes between NH and Udecott that could amount to “tens of millions of dollars” which needed to be resolved. Further, that NH would not give back the C&E building to Udecott unless it was awarded or was going to be awarded the Fit Out Works contract thereby securing an advantage over other bidders – an advantage that the ordinary reader would feel to be improper, dishonest and corrupt.

22. Further, the reasonable reader is led to believe that NH would get the Fit Out Works contract even though NH was not entitled to it because of Elias’s friendship with Winston Riley, an adviser to Udecott. Counsel submits that the ordinary reader reading between the lines would have understood the words to mean that NH would try to get the fit out works contract by virtue of a bid process corrupted by NH’s knowingly wrongful and dishonest conduct of holding on to the building and Elias’ friendship with Udecott’s adviser.

### ***Defendant’s Case/ Submissions***

23. The defendant has maintained that his “target” was Udecott and not NH or Elias. He says it was never his intention to argue a position that may suggest that NH was part of the inefficiency, corruption and incompetence of Udecott. He however in fact ends up doing so by many of the allegations he makes while purportedly ‘defending’ himself from the claimants’ claim in his Defence and in his closing submissions. He sets out his

explanations for what he wrote in specific detail at paragraph 19 of his Defence. The defendant should consider himself lucky that statements made in court and documents such as pleadings and submissions generated during a claim are covered by privilege. Otherwise he would have opened himself up, justifiably, to further proceedings for defamation.

24. In his closing submissions (dated 28 April 2014), which will bear further comment later, he says that no suggestion of conspiracy was made or implied in his article. On the contrary, there was always the clear suggestion that “Udecott had no choice but to acquiesce to the claimant’s position of ascendancy in Contract regarding the claims and its right to offer to negotiate these claims in any manner acceptable to Udecott” (paragraph 20). He says the relationship between Mr Elias and Mr Riley – an advisor to Udecott - is an undisputed fact. He says the question of the claimant seeking unfair advantage was not one raised by him and any inference of such in this matter can only come from persons who are jittery and have an interest to protect (paragraph 19). The defendant submits that the view to be formed from his statements is that Udecott would have to settle outstanding claims with the claimant before it awarded the contract for the fit out works (paragraph 24). Also the question of bypassing the two lowest bidders and giving advantage to the claimant does not arise because it would be allowed and can be explained (paragraph 26).

### *Analysis*

25. In my view what the article plainly says and what the ordinary reasonable reader would understand from the article is this:

- i. Trouble is brewing in the fiefdom of Jearlean John / Udecott.
- ii. The media is not competent, it is not independent and it is corrupted.
- iii. There are issues surrounding the contract for the fit out works to the C&E building.



- iv. NH were the first contractors on site since April 2004 when they were awarded the contract for the base building works to the building.
- v. **NH is still on site today.**
- vi. **NH is arguing for the rights** to the contract to fit out the building.
- vii. The fit out works were expected to cost \$100M.
- viii. Given the above facts it is reasonable to assume that **there are many festering and unresolved issues between NH and Udecott.**
- ix. These issues could amount to tens of millions of dollars.
- x. The issues have to be resolved now or be subject to lengthy litigation/arbitration.
- xi. Recent bids for the fit out works ranked NH third.
- xii. Jearlean John and Udecott are being advised by a firm which involves Winston Riley.
- xiii. Winston Riley is a friend of Emile Elias.
- xiv. Udecott has to find a way to bypass the two lowest bidders to give NH the project.
- xv. At the same time Udecott has to settle all outstanding related to the original contract (for the base building works).
- xvi. If they fail (Udecott) **they have to find some way to get NH to hand over the site** before an award can be made to another contractor.
- xvii. This means they have to settle the outstanding issues with NH, which will be a challenge to do.
- xviii. There are many ways in which these issues can be settled.
- xix. What would be interesting to see is the solution Cabinet and Udecott selects and the final costs for the building works.
- xx. Rudi, Jearlean John, Eli Zakoor and Damian Hares have a problem.
- xxi. Given their ineptitude (Rudi et al) on the relocation of Parliament project we can only be in for more ineptitude by them.

26. From the above, while the statements may have been defamatory of Jerlean John, Udecott, the media, Winston Riley and 'Rudi et al', the statements in my view do not defame NH or Mr Elias – the claimants. The thrust of the allegations made are directed at the handling and management of the project by Udecott and the specific persons

mentioned. It is essentially saying that on the issue of the contract for the fit out works to the C&E building that Udecott has a problem.

27. It is not alleging that NH is in any way involved in any dishonest act or is misusing its position or conspiring with Udecott. It is not saying that NH or Mr Elias are responsible for Udecott's problem. It does not suggest NH would seek to use any improper means to get Udecott to give them the contract. Nor does it suggest that NH remains on the site for some dishonest/improper reason.
28. The informed reader would no doubt conclude that Udecott and its leadership are in a pickle. They have problems to try to get themselves out of the mess. The article, however, in no way implicates NH in any conspiracy or plot to get Udecott or Jearlean John out of the difficulty they have found themselves in. The fact that there may be unresolved issues between NH and Udecott does not in any way imply that NH is responsible for those unresolved issues. To say that there are unresolved issues cannot inherently be defamatory. That there are problems with the project does not in any way suggest that NH and Mr Elias are the ones responsible for these problems. To say there are problems with the project also cannot inherently be said to be defamatory.
29. That the article says Winston Riley is a friend of Mr Elias does not imply that Mr Elias or NH would seek to use this relationship to obtain an unfair advantage. It may imply that Mr Riley had a conflict of interest which he did not address.
30. The publication does not suggest NH is wrongly or unreasonably on the site or refusing to hand it over. It suggests rather that NH may have valid grounds to not hand over given the unresolved issues and/or to argue for rights to the new contract. If Udecott does not award the contract to NH given these unresolved issues or without resolving them they may find themselves in difficulty. It does not suggest any wrongdoing on the part of NH. Further, unless the reader makes the necessary correction of "below" to "above", the article actually states that Udecott ranked NH third when it bid \$10 million below the other bidder.

31. I therefore do not find the words used by the defendant to be defamatory of the claimants.

***Factual Errors/ Inaccuracies***

32. Even so, the claimants take factual issue with certain of the defendant's allegations. These relate mainly to the statements that NH was still on the site; did not hand over the site; and that there were festering and unresolved issues between NH and Udecott at the time of the publication. They say these statements were entirely false and the defendant knew them to be so. There was no evidence, however, on how the defendant would have known them to be false.

33. The defendant conceded that at the time of the publication a settlement may have been reached between the claimants and Udecott but maintained in his defence and submissions that being 'off site' did not mean that the claimants would have returned full possession to Udecott. He also relies on the issuance of the completion certificate as evidence of when the project was actually completed.

34. Mr Elias relied on documentary evidence which he says show NH was fully off the site by 3 November 2008 (see paragraphs 22 and 23 of his witness statement). He also produced a Final Account summary dated 16 November 2011 (see paragraph 27 of witness statement) and that all matters concerning the contract had been settled since 16 November 2011.

35. On the evidence I find that the statements made by the defendant in this regard were factually incorrect. I accept on the documentary evidence provided that the claimants' were at least off site at the time of the defendant's publication (see evidence of Mr Elias above). I am also not of the view that the issuance of the completion certificate is evidence of the date NH re-delivered possession of the site to Udecott.

36. However, while falsities or factual errors may be defamatory or contribute to the damage and injury caused to a party in an appropriate case, I do not find the effect of the statements here to be defamatory given my findings above on the meaning which can be attached to the words.
37. The court notes however the defendant's assertion of his entitlement and duty as a citizen to question how public funds are dealt with and to express his views on questions of public interest. This may be so but at the same time this does not give him license to be loose with facts or questions and draw assumptions when facts are not known or when the facts stated are inaccurate. Persons such as the defendant who make public comments about other persons cannot be reckless and must understand that false or unverified statements can and often do cause tremendous injury and harm. It is far too common in this country for unverified statements to be made as being true when the speaker of those statements either does not know those statements to be true, does not care whether they are true or knows they are not true and nonetheless goes on to make them.
38. The claimants' being in the position they are (contractors involved in the tendering process for securing construction contracts) must validly have been concerned as to the effect of the defendants' statements/ allegations on their credibility and integrity. Luckily for the defendant in this case however, the publication cannot be said to have defamed the claimants' in the manner in which it asserts the facts.

### ***Defendant's Conduct of Matter***

39. Before concluding, the defendant's conduct of the matter and certain statements made in correspondence and in filed court documents warrant some comment. In his closing submissions the defendant sets out several matters of concern in the way the matter was handled by the court.
40. A number of the statements are disingenuous to say the least and even border or may amount to contempt of court.

41. He complains of the court ignoring requests for subpoenas of persons unconnected with the claim he had to defend “in arriving at facts and truths relevant to the matter”. The defendant seems not to appreciate that this court is not a court of inquiry such as a Commission of Enquiry but is governed by rules based essentially on an adversarial process where each party is generally responsible for presenting its own case. These rules are not arbitrary and they are not of this court’s own making but are laid out by statute to ensure efficiency and fairness in the conduct of litigation.
42. The defendant seems to suggest that he had to request a hearing in open court, not appreciating that case management is generally for the parties only and held in chambers and the trial is for open court. The trial was held in open court and anyone who wished to attend had the right to do so.
43. He also complains about the court’s failure to give assistance to him to have UDeCOTT, which was not a party to this claim, make available a copy of the Final Accounts for the project which he says “would have assisted the court in unearthing relevant truths and facts”.
44. He complains of the court proceeding in his absence on the day of the trial (“the only occasion I was absent from court”) for which he had more than adequate notice. His excuse was that he wrongly thought it was the next day, although he said he correctly recorded the date. He says: “The “one strike and you are out” rule was summarily applied to my matter by the Court – with serious consequences to me, the truth, our democracy, the country, its citizens, Justice, and even the courts itself.” He arrogantly asserts, notwithstanding that what a trial was about had been patiently explained to him, “I should not have to add that even if I were present in Court I would not have been ready to proceed given the fact that the co-operation I requested of the Court – which would have greatly assisted its own deliberations, was not yet responded to.”
45. While the defendant may have thought it more practical to do things in his way, rules and procedures of court are there for a purpose; namely to govern the orderly and fair conduct

of litigation. Further the court acts on the basis of proper applications being put before it justifying why specific requests are being made. It does not act on emails sent to the court's Judicial Support Officer (JSO) in the absence of proper applications. Applications must be supported by evidence in appropriate cases. Nevertheless, it is to be noted that the defendant was given a great deal of leeway throughout these proceedings by both the court and counsel for the claimants.

46. There were several other issues relating to the defendant's conduct of his case. His Defence contained scandalous matters in some respects which could have been struck out. He did not comply with all of the court orders. By an email sent to the court's JSO he claimed confusion relating to the process which resulted in the court setting a special hearing at short notice to explain the process to him further. He also failed to appreciate that being absent without an excuse at the trial would invariably have led to the striking out of his witness statement. It was his deliberate decision not to have legal representation and have the benefit of trained legal guidance and assistance. Had he made diligent enquiries the claimant would have found a competent attorney to advise and represent him.

47. The defendant appeared to have a colossal misunderstanding as to the court process and how a case such as his was to be defended. The defendant's demonstrated inclination to be loose with the truth as concerned the claimants also seems to have extended to his statements about the court. Notwithstanding the various disrespectful statements by the defendant in his submissions about the court's exercise of its judicial discretion, only a few of which I have highlighted, it sometimes is necessary, in the interest of the freedom and democracy that the defendant and the rest of us cherish, to suffer unfair comments such as the defendant's without invoking the court's additional powers to deal with them. And this is the course I propose to take even though several statements made in the defendant's submissions are grossly out of order.

### *Conclusion/ Orders*

48. In conclusion, while the court understands the claimants were aggrieved given the factual inaccuracies in the defendant's publication, these did not amount to a defamatory attack. It is hoped that the access to the court's process to give their side regarding these significant inaccuracies has nonetheless gone some way to vindicate them notwithstanding the court's legal findings on defamation. The court doing its duty must therefore order the claimants' case be dismissed.

49. There will be no order as to costs. The defendant incurred no legal costs having represented himself and in any event the manner of his conduct of the claim would disentitle him to an award of costs.

50. I wish finally to record the court's appreciation to Mr Sharma for the commendable manner in which he conducted the case for the claimants and for the assistance he gave to the court throughout the hearings and even to the unrepresented defendant at times.

Ronnie Boodoosingh

Judge