



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV02296

| | | |
|----------------|--|---------------------------------|
| BETWEEN | THE MOST HON. ANDREW HOLNESS | CLAIMANT |
| AND | RADIO JAMAICA LIMITED | 1ST DEFENDANT |
| | TELEVISION JAMAICA LIMITED | 2ND DEFENDANT |
| | ZAHRA BURTON | 3RD DEFENDANT |
| | ZAHRA BURTON (trading as Global Reporters of the Caribbean) | 4TH DEFENDANT |

**Application for permission to Discontinue Claim against 1st Defendant – Whether
Costs to be ordered – Discretion – Group of Companies**

Gordon Robinson instructed by Winsome Marsh for Claimant

**Michael Hylton QC and Kevin Powell instructed by Hylton Powell attorneys at law
for First Defendant**

Heard: 20th June, 2016 and 14th October, 2016

IN CHAMBERS

CORAM: BATTIS, J.

[1] On the 20th June 2016 I made the following orders:

- a) Permission to Discontinue the Claim against the 1st Defendant is granted.
- b) No order as to Costs.
- c) This Order is made without prejudice to the 1st Defendant seeking to have damages assessed pursuant to the Claimants undertaking as to damages.
- d) Application by 1st Defendant to discharge Injunction is withdrawn.
- e) First Defendants attorney at law to prepare, file and serve the Order.

I promised then to put my reasons in writing. This short note is the fulfilment of that promise.

[2] The Claimant by Notice of Application filed on the 16th June 2016 seeks permission to discontinue the Claim against the 1st Defendant and asks that there be no order as to costs. The 1st Defendant resists the application only to the extent that costs they feel, ought to be paid by the Claimant.

[3] Their respective counsel made detailed but concise oral submissions on the matter. Each relied on a chronology of events. I will not restate their respective submissions save to say that Mr. Gordon Robinson argued that there be no Order for Costs in all the circumstances and in particular because there had been some confusion as to who was the appropriate Defendant. Mr. Hylton, on the other hand, urged the court to apply the normal rule because there was evidence that the Claimant was in no doubt as to who the appropriate Defendant ought to have been.

[4] Having considered the affidavits and the submissions I allowed the matter to be discontinued with no Order as to Costs, in spite of the general rule that the party withdrawing a claim should pay costs. See the CPR Rule 37.6(1) which states:

“Unless –

a. The parties agree; or

b. The Court orders otherwise,

a Claimant who discontinues is liable for the costs of the defendant against whom the claim is discontinued incurred on or before the date on which notice of discontinuance was served.”

[5] I am satisfied that the Claimant’s decision to name Radio Jamaica Limited as a Defendant was not unreasonable given the Claimant’s state of knowledge and the relatively short time available prior to commencing the claim. This Claimant asserts that it was on the 28th day of May 2016 that he became aware of a “renewed intention to air the programme” (See Paragraph 3 Affidavit of the Most Hon. Andrew Holness filed on the 2nd June 2016). The claim be it noted was filed on the 2nd June 2016. In his affidavit of the 7th June 2016 the Claimant says:

“4. At the time of filing suit, which was done as an emergency filing because none of the defendants had replied to my senior Counsel’s demand letter, I was not aware as to how the RJR Communications Group had been organized by the 1st Defendant or whether the 2nd Defendant is the entity that owns TVJ. Because there has been no indication from the Defendants as to how the internal affairs of the Group have been arranged, I am still not certain as to TVJ. Additionally, the 1st Defendant is parent company for a diverse group of media entities so has the ability to make arrangements for a rebroadcast of the offending programme through any of its media outlets including TVJ.”

[6] The 1st Defendant’s counsel points to the second paragraph of that same affidavit as showing knowledge of the very thing of which the Claimant pleads ignorance. I do not think that the general knowledge about how a group of companies is organised necessarily translates to certainty about which is the responsible

entity. It is true that had time allowed detailed company searches or enquiry may have been able to provide the necessary details.

- [7] In this regard it is important to note that the first formal letter of demand was not addressed to any registered company but was addressed as follows:

“Television Jamaica

**Attention: Mr. Gary Allen,
Managing Director and Ms. Zahra Burton
Founder and Executive Producer
Global Reporters for the Caribbean.**

That letter which was dated the 31st May 2016, was responded to on the 3rd June 2016 by Messrs Hylton Powell. The attorneys described themselves as acting for “Television Jamaica.” The letter was similarly copied to “Television Jamaica.” The word “Limited” was significantly omitted. Messrs. Hylton Powell explains that when the letter of the 3rd June was written they had not yet seen the documents filed in court.

- [8] The assertion as to confusion about who the responsible person or persons were, is further confirmed by the Claimants attorney’s letter of the 14th June 2016 addressed to the Defendant’s attorney:

“We are not privy to the internal arrangements within RJR Communications Group and the 1st Defendant is the parent company for all. It’s only now being alleged by you that the 1st Defendant is not a proper Defendant....

We will take your latest assertions under advisement and make whatever adjustments deemed necessary on June 20.”

- [9] The fact however is that the Claimant filed an application on the 16th June 2016 for permission to discontinue. This came after they were served at 3:52 p.m. on

the 15th June 2016 with an Affidavit of Stephen Greg on behalf of the 1st Defendant. That affidavit sets out in detail the relationship between the 1st Defendant and Television Jamaica Ltd.

[10] The timelines are short. The Claimant did not delay in the making of the application. In all the circumstances therefore, and for the reasons stated herein I granted permission for Discontinuance against the 1st Defendant and made no Order as to Costs.

David Batts
Puisne Judge