

IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO: 251 of 2013

BETWEEN

JOHN MUTRIE

CLAIMANT

AND

**THE ATTORNEY GENERAL
CHANNEL 7 NEWS
CHANNEL 5 NEWS
LOVE FM**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT**

Keywords: Practice and Procedure; Application for extension of time under Part 26.6(2)(c) RSC 2005; Application for relief from sanctions under Part 26.8 RSC 2005; Application to set aside default judgment under Part 13.3(1).

Claim for Libel and Slander; Press Release by Police Press Office; Natural and Ordinary meaning of statement in Press Release.

Before the Honourable Mr. Justice Courtney A Abel

Hearing Dates: 3rd February 2014
31st March 2014
14th April 2014

Appearances:

Mr. Dean R. Lindo S.C., for the Claimant

Mr. Herbert Panton for the 1st Defendant

Ms. Leslie Mendez for the 2nd Defendant

Mr. Leo Bradley Jr. holding for Courtenay Coye LLP, for the 3rd Defendant and appearing for the 4th Defendant.

DECISION
Delivered on the 14th April 2014

Introduction

- [1] Today has been fixed for the following:
- (a) Decision on an Application for extension of time and relief from sanctions filed by the 1st Defendant on the 16th September 2013.
 - (b) Decision on an Application to set aside default judgment filed by the 4th Defendant on the 7th January 2014; and
 - (c) Case management conference.
- [2] It is convenient for me to consider all three matters now.
- [3] The claim was commenced on the 25th April 2013 by the Claimant against the Defendants for Damages for libel and slander in relation to alleged false statements about the Claimant as a perpetrator of a crime in Police Press Release dated 23rd September 2012.
- [4] The subject matter of the claim herein is the following Press Release (“the Press Release”) released by the Police Press Office¹:

“RAPE

A 35 year old female of Hopeville Area reported that on 21st September, 2012 about 8:00pm she went to Mutrie mechanic shop to sell bread. About 10 minutes later she left the mechanic shop along with John Mutrie enroute to Scotia Bank however whilst on the way she agreed to go with him to Forest Home to his friend who was apparently involved in an accident. Whilst on the way she was given some water to drink by John that caused her to get dizzy and passed out. On 22nd September, 2012 about 11:30 am she woke up and realized that she was involved in sexual intercourse. The woman was then informed by one Keron Molina that when she was taken to her house by Mex Castro she was completely naked.

¹ Represented by the 1st Defendant.

Complainant also stated that during the ordeal she lost (1) 14K nose ring with a diamond valued \$400.00bcy along with \$300.00 bcy cash. Police investigation continues.”

- [5] The claim alleges that the Press Release was subsequently reproduced and broadcasted by the 2nd, 3rd and 4th Defendants on the 24th September 2012 as a result of which, it is claimed, the reputation of the Claimant was injured by exposing him to hatred, ridicule and contempt and that his business had suffered “from the baseless accusations released by the Defendants”.
- [6] The Claim is for damages for libel and slander in respect of the Press Release allegedly “falsely, recklessly and maliciously” divulging “the identity of the Claimant for a crime he had not been charged for” before the investigation had been fully concluded or a trial conducted; and which “has created a bias against the Claimant affecting his livelihood and reputation in the community”.
- [7] It is claimed that the Press Release suggested that the Claimant had drugged the Complainant and/or had committed the crime of rape on her.
- [8] It is to be noted that the Claimant alleges against the Police Press Office that it was the the identity of the Claimant which was “falsely, recklessly and maliciously divulged” against the Claimant, not that the allegation against the Claimant, or his conduct, was false and malicious (thereby suggesting that the same was untrue).
- [9] The 1st Defendant having on the 29th day of April 2013 been served with the Claim Form and Statement of Claim, did on the 17th May 2013 file an acknowledgement of Service in which it indicated that it intended to defend the claim. But the 1st Defendant failed to file a defence within the 28 days of service (on or about 28th May 2013) as prescribed by the rules. The claimant applied to the court on the 14th June 2013 for an application for permission to enter a Default Judgment against it pursuant to Part 12.1(b) and Part 12.3(1)(a) of the Supreme Court Rules 2005, and for damages to be assessed. This application is being considered in this decision.

- [10] The service of the claim in relation to the 2nd Defendant has been acknowledged, a Defence filed on the 29th May 2013, followed by a Reply to Defence on the 25th June 2013.
- [11] In relation to the 3rd and 4th Defendants, both having on the 30th day of April 2013 been served with the Claim Form and Statement of Claim, and not having filed an acknowledgment of service within the prescribed time, the claimant applied on the 17th May 2013 for, and on the same day obtained, a judgment in default of acknowledgment of service against both the 3rd and 4th Defendants for damages to be assessed by the Court pursuant to Rule 16.2.
- [12] In relation to the 3rd Defendant alone a default judgment had been entered against it on the 17th May 2013, followed by an application to set aside the default judgment on the 23rd May 2013 which application was successfully considered and granted by the Honourable Registrar on the 31st July 2013, and a Defence was filed on the 1st August 2013, followed by a Reply on the 11th September 2012.
- [13] There is also a Request for Issue of Writ of Execution filed against the 4th Defendant on the 27th November 2013.
- [14] As a result, the claim is being defended by the 2nd and 3rd Defendants and is due to be managed at a case management conference.
- [15] In relation to the 1st and 4th Defendants there is now to be considered (a) a Request for Entry of Judgment, and (b) an application to set aside a default judgment which I will deal with in turn.

Application by 1st Defendant for an extension of time to file and serve a Defence and for relief from sanctions.

- [16] I first deal with the application by the 1st Defendant (representing the Police Press Office) for an extension of time to file and serve a Defence and for relief from sanctions respectively under Part 26.6(2)(c) and 26.8. I also had the benefit of the Judgment of Chief Justice Kenneth Benjamin in the Belize case of *The Attorney General of Belize v Florencio Marin & Jose Coye*², and the careful analysis

² Claim No 41 of 2009 [Unreported].

therein of the applicable rules to extend time for compliance with any Rule and also for relief from sanctions.

[17] This application was no doubt prompted by an application filed on the 14th June 2013 by the Claimant under Part 12.1(b) and 12.3(1)(a) for permission to enter a Default judgment against the 1st Defendant (which I will also deal with).

[18] But in the Affidavit in support of the application for extension of time, the 1st Defendant, by its legal advisor, deposed to the bureaucratic and geographical difficulties within the administration of the police department which resulted in delays, as well as the intervention of the summer recess, which resulted in the failure to timely file a Defence and an application for extension of time. But that this application was done at the end of the summer vacation period.

[19] The Defendant also set out (by stating in the application and/or deposing to same in his Affidavit in support) in relation to its application for relief from sanctions, the considerations required by this rule, and sought to prove that:

- (a) The application was made promptly.
- (b) Failure to comply was not intentional.
- (c) The 1st Defendant has generally complied with all the other relevant rules.
- (d) It is in the interest of the administration of justice to grant the extension of time.
- (e) The failure to comply “was precipitated by circumstances beyond its control” namely the tardiness of response from relevant persons within the police system not of its legal advisors.
- (f) No trial date has been set and therefore no prejudice to the Claimant would result.

[20] A Draft Defence was later appended to an Affidavit filed on the 7th January 2014, in which it is alleged that the Press Release was not defamatory, was not actionable per se and that the Claimant brought the Claim against the 1st Defendant, a public authority, without the required 30 day Notice under the Public Authorities Protection Act.

[21] Counsel for the Claimant points to the inordinate delay by the 1st Defendant (5 months) in bringing its application.

[22] I have carefully considered the application, the circumstances of the case and the points raised by Counsel for both parties and have come to the conclusion that:

(a) An extension should be granted to the 1st Defendant to file and serve a Defence on the Claimant.

(b) Relief from sanctions be granted to the 1st Defendant for its failure to comply with the rules, and

(c) Permission not be granted for a Default Judgment to be entered against the 1st Defendant for failure to defend.

[23] My reasons for arriving at these conclusions are as follows:

(1) As noted, I do consider that the claim may be somewhat defective as perhaps, inadvertently, it failed to directly allege (although could be interpreted as alluding to) that the allegations in the Press Release were untrue, and/or falsely and maliciously made and published as they relate to the Claimant.

(2) That the requirements of Part 26.8 have been met or satisfied, and in particular the administration of justice would be served by relieving the 1st Defendant from sanctions..

(3) That I do not consider, given the facts deposed to by the 1st Defendant, that there has been inordinate and inexcusable delay by the 1st Defendants especially given the intervention of the court's summer vacation during the period under consideration, and,

(4) That it would be just to do so in conformity with the overriding objectives of the Rules, in particular ensuring that the parties are on an equal footing, and that doing so is proportionate to the importance of the case and the nature and the complexity of the issues involved.

[24] In passing I might observe, without necessarily ruling on the case, that in relation to which I did not hear full arguments, that it appears to me that the statement in

the Press Release, on its face, does appear to be capable of a defamatory meaning, as it does at least suggest or imply, that the Claimant drugged the Complainant and thereby, at the very least, he thereby facilitated the alleged rape of the Complainant.

[25] It may be that the Claimant may wish to amend his claim and if he wishes to do so it may be convenient to do so at this time.

Application by 4th Defendant that the default judgment entered against it on the 17th day of May 2013 be Set Aside.

[26] I now consider the application by the 4th defendant that the default judgment entered against them on the 17th May 2013, be set aside.

[27] As noted above the Claim form and Statement of Claim having been served on the 30th April 2013, the Claimant applied on the 17th May 2013 for a Request for Entry of Judgment in Default, and on the same day a Judgment in default of acknowledgement of service was entered against “the 3rd and 4th Defendants”, for ‘damages to be assessed by the Court pursuant to Rule 16.2 of the Civil Procedure Rules’.

[28] An Acknowledgment of Service was then filed, on the 24th May 2013, apparently unaware that the default judgment had been entered against it, in which it stated it intended to defend the claim.

[29] On the 21st June 2013, the 4th Defendant then filed a Defence to the claim in which it:

- (a) Denied that it aired any defamatory press release referring to the Claimant.
- (b) Generally denied put the Claimant to proof the allegations against it.

[30] In the 4th Defendant’s Application and its Affidavit in support filed along with it, the 4th Defendant:

- (a) Stated that it filed the application as soon as reasonably practicable after finding out that the default judgment had been entered.

- (b) Stated it had a good explanation for its failure to file an Acknowledgment of Service within the prescribed time namely, that it did not understand how the claim form had come to be served on it as the person on whom the claim form had allegedly been served was never in the employ of the 4th Defendant.
- (c) That the 4th Defendant did not become aware of the default judgment until 25th November 2013 at a case management conference, that a default judgment had been filed against the 4th Defendant, as the same had never been served on before then.
- (d) That as soon as reasonably practicable an application was made to set aside the default judgment.
- (e) That it is a mystery as to how the claim reached the desk of the appropriate person within the 4th Defendant.
- (f) That the 4th Defendant has a statutory defence to the claim.

[31] This application is made under the discretionary powers of the court to set aside a default judgment and not under its mandatory power under Part 13.2.

[32] I have carefully considered the application, the circumstances of the case and the points raised by Counsel for both parties and have come to the conclusion that:

- (a) The default judgment entered against the 4th Defendant on the 17th May 2013 should be set aside.
- (b) That the Defence of the 4th Defendant be deemed properly filed and the 4th Defendant be thereby entitled to defend the claim.

[33] My reasons for arriving at these conclusions are as follows:

- (a) As I have noted above, I do consider that the claim may be slightly defective as perhaps, inadvertently, it failed to allege or even to suggest, that the allegations in the Press Release were untrue, and/or falsely and maliciously made and published as they relate to the Claimant.

(b) That, similarly to the previous application, the requirements of the appropriate provisions, namely Part 23.3 and 13.4 have been met or satisfied and in particular (i) there appears to be some irregularities about the service of the claim form and statement of claim on the 4th Defendant, (ii) the Claimant failed to serve on the 4th Defendant the default judgment, and (iii) that the 4th Defendant has a real prospect of successfully defending the claim.

[34] In relation to the 4th Defendant I again note that it may be that the Claimant may wish to amend his claim and if he wishes, in the interest of time, I will also consider his application now.

[35] Finally I did not consider the Affidavits filed by the 4th Defendant on 26th March 2014, after the hearing of the present application, and before the present ruling, as I did not consider it proper to do so.

[36] I might add that in relation to the claim generally it appears that there will, in any event, be a contested hearing in relation to the Press Release and the defences, both of which are proceeding in relation to the case involving the 2nd and 3rd Defendants (and may raise the same or similar issues in relation to the 1st and 4th Defendants). It therefore appeared to the court that the overriding objective of dealing justly with the case as a whole, and in particular of ensuring that the case is dealt with expeditiously and by the allotting to the case as a whole an appropriate share of the court's time, requires that any defence by each of the Defendants herein should be considered together at this time; rather than possibly have a fragmented, and possibly delayed, trial of the issues of the case as a whole.

Costs

[37] In the circumstances of the case I will make no order as to costs in relation to the applications which I have just considered.

Disposition

[38] In relation to the 1st Defendant I order:

(a) That the 1st Defendant is permitted to defend the claim herein.

- (b) Relief from sanctions for its failure to comply with the rules.
- (c) Permission is not granted to the Claimant for a Default Judgment to be entered against the 1st Defendant for failure to defend.

[39] In relation to the 4th Defendant I order:

- (a) The default judgment entered against it on the 17th May 2013 is set aside.
- (b) That the Defence of the 4th Defendant be deemed properly filed and the 4th Defendant is thereby entitled to defend the claim.
- (c) That Writ of Execution is not to be issued against them.

Case Management Conference

[40] I will now give Case management directions in this case as follows:

- (a) That the Claimant is permitted to file and serve an amended Statement of Claim on or before 30th April 2014.
- (b) The Defendants are permitted to file and serve Defences or Amended Defences on or before 15th May 2014.
- (c) That this case management hearing is adjourned to the 9th June 2014 at 11.30 am.

The Hon. Mr. Justice Courtney A. Abel