

**IN THE SUPREME COURT OF BELIZE A.D. 2020**

**CLAIM NO. 92 OF 2020**

**BETWEEN**

**RENE MONTERO SR.**

**CLAIMANT**

(

**(AND**

(

**(TIMES NEWSPAPER LTD.**

**1<sup>st</sup> DEFENDANT**

**(JOSE JIMENEZ**

**2<sup>nd</sup> DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Decision:

19th January, 2021

Appearances:

Mr. Rene Montero, Counsel for the Claimant.

Mr. Michel Chebat SC, Counsel for Defendants.

**KEYWORDS: Defamation - Newspaper Publication - Meaning of words in Articles - Whether Capable of Meaning Claimed - Article to be Considered as a Whole - Words to be Given Natural and Ordinary Meaning - Consideration of the Facts of Each Case**

## DECISION

1. This is a ruling on an Application to determine whether certain words are capable of bearing the meaning pleaded by the Claimant. The Claimant was the then Minister of Works and Representative for the Cayo Central District. The First Defendant is the proprietor and publisher of The Belize Times for which the Second Defendant is its editor. The substantive claim is one for damages, including aggravated damages for libel and an injunction.

2. This Application is made pursuant to Rule 68.4 of the Supreme Court Civil Procedure Rules which state:

**(1) At any time after the service of the statement of claim, either party may apply to a judge sitting in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case.**

**(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.**

3. **The Words Complained of:**

There has been no denial of the following by the Defendants:

**The First Article captioned “\$259 Million to biggest Crony Ever!”**

On the first and second page of the issue of “*The Belize Times*” dated the 8th December, 2019, the Defendants wrote, printed and published or caused to be written, printed and published an article about and concerning the Claimant together with this picture containing the following words:

*“It was announced this week, to nobody’s surprise, that Prime Minister Dean Barrow’s favourite contractor was awarded two more contracts worth \$134 MILLION for work to be done on the Coastal Road. While the Minister of Works, Rene ‘Kickback’ Montero has not confirmed yet, the Belize Times has been reliably informed that Hernandez will also receive the contract for the replacement of the Haulover Bridge, another \$49 MILLION.*”

**The Second Article captioned “Belly of the Beast”**

On the seventh page of the issue of ‘*The Belize Times*’ dated the 8th December, 2019, the Defendants wrote, printed and published or caused to be written, printed and published an article about and concerning the Claimant containing the following words:

***“Imer Again***

*We don’t really like to get too personal in this column, but that damned Imer is a pig, and Dean Barrow and all those who participated in this travesty, including no doubt Minister of Works Rene ‘Kickback’ Montero and Imer’s own uncle Gaspar are worthless scum. How in the name of all that’s holy could Imer Hernandez have been given another contract, this time for \$134 MILLION to pave the Coastal Road? That is stinking corruption at its worst, and we know exactly how it’s done, because we’ve been told. Imer sends in a bid to the relevant Ministry, and then his bid is modified and pushed through while others are held back, ensuring that he gets the nod. **We know it, and it’s illegal, and people are going to go to jail. That is the God’s truth.** This is too much now. How can a man who hasn’t been able to competently handle one project in his entire contractor’s career since 2008, continue to get hundreds of millions in contracts? As the honourable John pointed out, just a few of Imer’s contracts amount to \$259MILLION. That is grotesque. **Outrageous. Jail, I tell you. Imer and everybody who colluded to rob this country of so much money.**”*

4. **The Claimed Meaning:**

The Statement of Claim states at paragraph 6 that the words complained of in both articles “(i)n their natural and ordinary meaning .... meant and were understood to mean that the Claimant has received an amount of money illegally in exchange for secret help or work, particularly, for the award of contracts to Imer Hernandez”

“7. Further, in the article entitled “Belly of the Beast” reiterates the words complained of in paragraph 6 herein and that the claimant has acted illegally and will go to jail. Further, the Defendants stated that they know this (the Claimant acted illegally) to be the case and that it is the truth”

“8. That the Claimant has acted in a criminal manner, robbery, a criminal offense punishable by a term of imprisonment.”

5. **The Defence:**

In their Defence, the Defendants maintain that the words were incapable of bearing the meaning claimed and they were in fact only fair comment on a matter of public interest.

6. **The Law:**

Counsel for the Claimant relied on **Chung v Future Services Limited et al [2002] 2014 JMCA Civ 21 at paragraph 16** and what was considered the correct approach as explained by Lord Nichols in **Bonnick v Morris et al [2002] UKPC 31:**

*“As to meaning, the approach to be adopted by a court is not in doubt. The principle was conveniently summarised by Sir Thomas Bingham MR in Skuse v Granada Television Ltd [1996] EMLR 278, 285-287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the [newspaper], reading the article once. The ordinary, reasonable reader is not naive: he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant. An appellate court should not disturb the trial judge’s conclusion unless satisfied he was wrong.”*

Morrison JA, having discussed a number of authorities (Jamaican and British) then advanced the following propositions at paragraph 37:

(1) *“On an application for a determination on meaning under rule 69.4 of the CPR, the court’s immediate concern is whether the words complained of are capable of bearing the meaning attributed to them by the claimant; however, applied for this purpose, the test to be applied by the court is no different from that applied in the deciding whether words are capable of having any libellous meaning.*

(2) *In considering a publication that is alleged to be libellous, the court should give the words complained of the natural or the ordinary meaning which they would have conveyed to the ordinary, reasonable and fair-minded reader; that is, a person who is not naive, unduly suspicious or avid of scandal.*

(3) *Applying this criterion , the judge must determine the single meaning which the publication might be apt to convey to the notional reasonable reader and to base his consideration on the assumption that this was the one sense in which all readers would have understood it.*

(4) *Either in addition, or as an alternative, to the natural and ordinary meaning of the words complained of, the claimant may rely on extrinsic facts, which must be pleaded, to show that the words convey a meaning defamatory of her which, without such evidence, they would not bear in their natural and ordinary meaning.*

(5) *While the Court of Appeal will always be very reluctant to reverse an interlocutory finding of a judge at first instance that the words complained of are capable of bearing the meaning or meanings alleged by the claimant in the statement of case, where the judge has held that the words are not capable of bearing that meaning or those meanings, with the result that the issue will never go to trial, the court’s reluctance to interfere will be less marked.”*

7. Counsel, in further support of his position, then presented the meaning of the word kickback. In the **Cambridge Dictionary** a kickback is stated to be *“an amount of money that is paid to someone illegally in exchange for secret help or work.”*

The **Collins Dictionary** defined it as “*a sum of money that is paid to someone illegally.... and is synonymous with a bribe*”

8. Senior Counsel for the Defendants provided the test of what is defamatory as outlined in **Halsbury Laws of England Vol. 28 paragraph 43**;

*“In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary person. Having determined the meaning, the test is whether under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense.”*

9. The reasonable person was defined in **Rubber Improvement Ltd v Daily Telegraph, and Rubber Improvement Ltd v Associated Newspaper Ltd [1964] AC 234 at 259** thus: “*ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.*”

10. He then placed reliance on the principles expounded in **Charleston v News Group Newspaper Ltd [1995] 2 ALL ER 313** and urged that each article is to be read in its entirety and taken as a whole without certain parts being read in isolation. The meaning to be ascribed is therefore that considered by a reasonable and fair minded reader who has read the entire article.

11. This Court agrees that the meaning of the words in question is determined by consideration of the entire article through the eyes of the ordinary, reasonable and fair minded reader. That reader, who is neither jaded nor naive but who sits comfortably at an equal distance from both extremes ready to find the single meaning in which the words are to be understood in the given circumstances.

12. **The First Article:**

**Claimant's Submissions**

The Claimant submits that the first article when read as a whole “*amplifies that the Minister of Work (sic) Rene Montero has received kickbacks and hence, acted illegally.*” That he was “*involved in tampering with bids in favour of Imer Hernandez.*”

Therefore, the words complained of, naturally and ordinarily mean that “*the Claimant has received an amount of money illegally in exchange for secret help or work, particularly, for the awarding of contracts to Imer Hernandez.*”

13. **Defendants' Submissions**

The Defendants reminded the Court that the headline and picture alone were not determinative. The subject of the entire article was the various contracts awarded to Imer Hernandez particularly the Coastal Road and potentially, the Haulover Bridge projects. The article also differentiates what is stated as a fact and what was only speculation. The use of the word speculation suggests unreliability which ought to allow the reasonable man to discern that the statements are not true.

14. The final paragraph is simply an expression of a promise by the Leader of the Opposition to investigate these and other contracts through the process of independent audits and where corruption is proven, to prosecute those seen to be responsible.

15. The words, therefore, mean that a disproportionate number of contracts had been given to Mr. Hernandez and those contracts were signed by the Claimant as the Minister of Works. There have also “*been many corruption*

*scandals involving ministers which, upon investigation, may lead to prosecution.” There was no implication that the Claimant definitely received money illegally or in exchange for secret help, has robbed or has acted in any other criminal manner.*

16. Senior Counsel sought to find similarities with the **Rubber Improvements Ltd case** where it was held that an ordinary man would not infer guilt where the article stated only that fraud was being investigated. He appreciated that each case must be considered on its own facts but thought it impossible that guilt of corruption could be inferred from a promise by the Leader of the Opposition to investigate ‘bloated contracts’.

17. **Consideration:**

This Court having considered the article as a whole can find nothing which could give the words complained of the meaning ascribed by the Claimant. The article took serious umbrage with the number of contracts awarded to a single individual who was perceived as incompetent and suggested that it, therefore, smacked of corruption. It concluded with an expression of the opposition’s intention, on gaining power, to conduct an independent audit (an investigation) and bring all offenders (whomsoever they may be) to justice.

18. While the then Minister was referred to as Rene ‘Kickback’ Montero that alone cannot be sufficient to prove libel in light of all that was stated in the article. For this reason this application fails.

19. **The Second Article:**

### **Claimant's Submissions**

The article is broken into free standing sections so the Claimant's focus was on the section which pertained specifically to him. Counsel submitted that the article uses the name Rene 'Kickback' Montero and points directly to the Claimant as being involved in illegal activity and would go to jail. He adds that the only illegal activity has to be receiving a kickback and his involvement in colluding *"to rob the country of so much money."*

#### 20. **Defendants' Submissions:**

Like the Claimants', the submissions related only to the particular part of the article which dealt specifically with the Claimant. Senior Counsel postured that there was nothing to suggest that it was the Claimant who pushed through the contracts while holding others back or that the Claimant definitively colluded to rob the country.

21. They submitted, further, that in the exercise of freedom of expression, some degree of exaggeration should be permitted to writers. Therefore, describing the Claimant as scum should be seen as nothing more than a personal opinion or an exaggeration for entertainment purpose.

#### 22. **Determination:**

This article is different. While its topic remains basically the same, it goes further. It not only refers to then Minister Montero as 'Kickback' but it explains that Imer Hernandez's bids are modified, fast tracked and approved by whatever Ministry awards the contract. All of this, the article insists, is not only true but illegal (collusion to rob the country) and jail worthy.

23. The main contract being referred to is one for the development of the Coastal Road. This is clearly a Ministry of Works project. If any uncertainty still exists as to who the offenders are, the article calls Mr. Montero by name and states “*all those who participated in this travesty, including no doubt Minister of Works Rene “Kickback” Montero....*”

24. This Court therefore finds that the words are capable of bearing the meaning pleaded in the Claimant's statement of case.

**Disposition**

25. The Claim in relation to the First Article captioned “*\$259 Million to biggest Crony Ever!*” is struck out as the words stated are not capable of bearing the meaning pleaded in the Claimant’s statement of case.

26. The words stated in the Second Article captioned “*Belly of the Beast*” are capable of bearing the meaning pleaded in the Claimant's statement of case.

27. Costs shall be in the cause.

28. The matter is adjourned for further case management on the 8th February, 2021 at 1pm.

**SONYA YOUNG  
SUPREME COURT JUDGE**