

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

CLAIM NO. 92 OF 2020

BETWEEN

(RENE MONTERO SR.

CLAIMANT

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(TIMES NEWSPAPER LTD.

1st DEFENDANT

(JOSE JIMENEZ

2nd DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

8th February, 2022

Appearances:

Mr. Estevan Perera with Mr. Rene Montero, Counsel for Claimant

Ms. Misty Marin with Mrs. Kia Marie Diaz-Tillett, Counsel Defendants

**KEYWORDS: Tort - Defamation - Newspaper - Minister of Government -
Assessment of Damages - Aggravated Damages**

JUDGMENT

1. This matter concerns words that were published by the First Defendant in its weekly newspaper, The Belize Times, while the Second Defendant was editor, which the Claimant says are defamatory. He claims damages including aggravated damages, an injunction, and costs.

2. In a prior decision, on an application by the Claimant, this Court ruled that the published words were capable of bearing the meaning pleaded by the Claimant. To this, the Defendants plead fair comment on a matter of public interest; alternatively, that the words are true in substance and in fact.

3. There is, therefore, no issue of whether the words had in fact been published since the Defendants admit this. There is no issue either as to the meaning which the words bear as this has already been determined.

The only issues for this Court to determine is:

1. Are the words defamatory?
 - A. Is the Defence of justification available to the Defendants?
 - B. Is the Defence of fair comment available to the Defendants?
2. If the answer to Issue one (1) is yes, then is the Claimant entitled to damages and in what quantum?

The Words:

4. In an article entitled “The Belly of the Beast” the following words were published:

“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."

Are the Words Defamatory?

The Evidence:

5. The Claimant testified that he is a retired politician, has represented the Cayo Central Constituency from 2008 to 2020 and was one of the higher-ranking Cabinet Ministers in the United Democratic Party government. While he was Minister of Works, he was not involved in the selection process of the project contractors. The Coastal Road Project (CRP) was no different. He received no bribes, never robbed or colluded with Imer Hernandez or anyone to rob the country of any money but worked always with pride, integrity and honesty.
6. The CRP was a Caribbean Development Bank Project with a project consultant which was an Italian based firm procured by the Ministry of Works. It is the project consultant that screened and evaluated the sealed bids submitted and the lowest qualified bidder was to be awarded the contract. He had no hand in selection and there was no opportunity for *"bids to be modified and pushed through while others are held back."*
7. Payments for Works are made directly to the contractors by the Ministry of Works after approval from the CDB consultants and are based on work

completed. Each contract contains a termination clause which allows the employer to terminate if the contractor *“(a) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other things of value, as an inducement or a reward:*

1. (i) for doing or forbearing to do any action in relation to the contract;

2. (ii) for show or forbearing to show favor or disfavor to any person in relation to the Contract,

or if any of the Contractor’s personnel, agents or subcontractor give or offers to give (directly or indirectly) to any person any such inducement or reward as described in paragraph (a).”

8. He adds that the Defendants have defamed him before, causing him to bring a claim which they eventually settled and made a public apology. Because of the statements in issue, his reputation has suffered, and he has been severely embarrassed, humiliated, and distressed. He has been questioned by persons as to why there has been no apology if the article was untrue.
9. His letter sent to the Defendants demanding a withdrawal, apology and damages with legal costs went unanswered and the article remains online.
10. Ramon Banos also testified for the Claimant. He said he was a member of the Cayo Central United Democratic Committee from 2010 to 2020. He had read the article and questioned Mr. Montero as to the truth of its contents whether he had received kickbacks from Imer Hernandez for the award of the Coastal Road project, whether he had modified bids and pushed others through while holding others back so that Imer could win.

11. Mr. Montero had explained the bidding and award process to him and assured him that the article was untrue. He, Ramon Banos, has been questioned numerous times by constituents about the veracity of the article and he has patiently explained that it was all untrue. Many questioned why there was no apology if this was indeed so and they refused to believe his explanation and said they would revoke their support for Mr. Montero.
12. Errol Gentle was employed as the Chief Executive Officer in the Ministry of Works from 2012 to 2020. He has read the article and knows that it is entirely false. The CDB has certain safeguards in place to prevent the possibility of corruption. More importantly, the Minister is not involved in the award of contracts, or the selection of contractors' process. That is the responsibility of the Project consultant who also supervises the project which includes making payments.
13. The Minister's involvement comes afterwards as he may or may not sign the contracts on behalf of the Government of Belize. He does this only after the approval of the Ministry of Finance, the Project consultant and the Contractor General. There is, therefore, no opportunity for, or possibility of, the Minister modifying bids or pushing bids through in favor of a particular contractor.
14. He concluded that during his time as CEO he had never seen, heard or received any complaints that Minister Montero had colluded to rob the country of money or that he had received any kickbacks.

15. The Defence presented the testimony of the Second Defendant. He affirmed that the First Defendant has no reporters in its employ but receives articles from various sources. The First Defendant is a member of the People's United Party (PUP) so often the articles published have a political overtone which tends to support the PUP.
16. As editor, he receives, screens, corrects, accepts, and rejects articles. The article in issue had no author, but there had been discussion in the office about allegations concerning the Claimant, so he was not surprised by the contents of the article. He says due to the political nature of the article and the entertaining nature of the column, its contents are usually exaggerated. Further, because of the political undertones of the newspaper itself, no damage would have been caused to the Claimant.
17. Michael Rudon, the current Director of the Government Press Office, and previous editor of the First Defendant said that he wrote articles for the column "Belly of the Beast" from 2018 to 2019. The newspaper is known to be a member of the PUP and has political undertones in support of the PUP.
18. The column, itself, is intended to provide editorial pieces which allow him to comment on public concerns. He admits to writing the article in issue and says that when he did, so his statements were matters of public interest.

19. He continues to hold this view on the basis that the projects are paid for through loans which the people of Belize are obliged to repay. *“So, if the money is not being siphoned off, the Belizean are not getting value for their money. It is my opinion that any matter which purports to involve corruption in any form concerning matters of Government or public funds, affects Belizeans and are matters of public interest.”*
20. Prior to writing the article, he spoke with a contractor who had personal knowledge of the contract and was informed of the bidding procedure. He had no personal interest or received any personal gain in the publication of the article. The article is his personally held honest opinion and due to the political nature of the newspaper, no damage was caused to the Claimant’s reputation.

B. Is the Defence of fair comment available to the Defendants?

Claimant’s Submissions:

21. The Claimant began his attack with the Defendant’s Statement of Case. He said they had failed to give the necessary particulars of fair comment in their Defence as was required by **Rule 68.3(c)** of the **Supreme Court (Civil Procedure) Rules (CPR)** and the Defendants should not be allowed to go beyond their pleaded case.

Rule 68.3 reads:

“A defendant (or in the case of a counterclaim, the claimant) who alleges that,
(a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and
(b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or
(c) pleads to like effect,
must give particulars stating -
(i) which of the words complained of he alleges are statements of fact; and
(ii) the facts and matters relied on in support of the allegation that the words are true.”

22. Counsel contends that paragraph 4 of the Defence, which deals with fair comment, relates to paragraph 6 of the Statement of Claim which deals primarily with the definition of “kickback”. They have not pleaded fair comment in relation to paragraphs 7 and 8 in the Statement of Claim which deals with the article in issue. There are only bare denials made and nothing more.
23. The Claimant then proceeded to treat with the Defence of fair comment. He relied on Gatley on Libel and Slander, 11th ed Note 12.2, which explains that for a Defence of fair comment to succeed, the Defendant “*must show that the words are comment, not a statement of fact.*”
24. Such a plea is defeated if the comment was actuated by malice and ought not to be relied upon unless the Defendant is satisfied that the facts are true, and he is able to support them with sufficient evidence - ***McDonald’s Corp v Steel [1995] 3 ALL ER 615.***
25. He continued that since none of the witnesses presented by the Defendants provided the Court with any proof that the Claimant received kickbacks and that Imer Hernandez’s bids were modified and pushed through receiving a nod, while others were held back or that the Claimant acted illegally or committed a criminal offence, this Defence must fail.
26. Additionally, the Claimant testified to the many malicious attacks made against him by the Defendants and a defamation claim which he filed but was

eventually settled. He says this is strong proof that the statement was, in fact, actuated by malice.

The Defendants' Submissions:

27. The Defendants' presented Halsbury's Laws of England, Volume 28, paragraph 135 "*the defence of fair comment is in the nature of a general right, and enables any member of the public to express defamatory opinions on matters of public interest. Such opinions must be based on true facts or facts stated on a privileged occasion and the defence only applies to statements which are recognizable by the reader or listener as expressions of opinion rather than statements of fact.*"
28. They also relied on *Tse Wai Chun Paul v Albert Chung [2001] EMLR 777* for the conditions under which the defence would prevail:
"1) the statement must be on a matter of public interest, 2) the statement must be based on facts which are true or protected by privilege, 3) the statement must be recognizable as a comment, as distinct from an imputation of fact 4) the statement must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is made, the reader should be in a position to judge for himself how far the comment is well founded, and to form his own opinion, 5) The statement must be a comment made honestly and is reasonable and fair. 6) The statement must not be actuated by spite or malice."
29. The submissions continued with a discussion of each of the stated conditions. Counsel pointed out that the Claimant was at all material times a politician and a representative in the House of Representatives. His position and actions would ordinarily attract public comment and even criticism and are quintessentially matters of public interest. He was at the time of the publication the Minister of Works with the duty of managing projects of the Ministry.
30. The article critiqued the awarding of government contracts to a particular contractor who has come under scrutiny in the past for his work. The

management of public affairs is undoubtedly a matter of public concern and interest.

31. The statement was based primarily on facts which are true, and the exaggerated diction was part of the entertainment intention and tone of the article. Counsel relied on *Turcu v News Group Newspapers Limited [2005] EWCH 799 (QB) III* which admonished the Court “...to consider whether the sting of a libel has been established having regard to its overall gravity and the relative significance of any elements of inaccuracy or exaggeration...” Counsel then opined that when the article is read as a whole “.....phrases such as “the God’s truth”, “outrageous jail I tell you”, “kickback”, “damned Imer is a pig” are not allegations of facts but opinion and hyperbolic support for the exaggerated tone of the article in furtherance of entertainment purpose.”
32. Counsel concluded that there could be no doubt which of the statements are facts and which are merely opinion. The article she postured was an editorial, and by definition per the Oxford dictionary, it gives an opinion on a topical issue. Any reasonable reader would therefore be able to discern for himself opinion as distinct from facts.
33. The newspaper itself is politically charged and while the Claimant refused to admit this under cross examination his hesitation when answering negatively when questioned, demonstrates quite clearly that he was so aware. Additionally, his admitted familiarity with the newspaper is instructive.
34. Because of the nature of the paper, anyone familiar with it would expect that everything in this column was the assertion of the writer rather than fact. In any

event, the comments were honestly made and were fair and reasonable based on the facts.

35. The Claimant, upon whom the onus lies to prove (*Clark v Molyneaux (1877) 3 QBD 237*), has not proven that the comments were actuated by malice. They also failed to plead and particularize the issue of malice in their statement of case. Therefore, any submissions made in this regard would not be in compliance with **Rule 68.2(c)** of the **CPR**.

Court's Consideration:

36. The Court, having considered the evidence presented by the Defence, can find no evidence on which to ground a defence of fair comment. The Court agrees with Counsel for the Claimant that the defence had not been properly pleaded. However, there was no application to strike, and the issue was seen to be live by both parties in their joint Pre-trial Memorandum.
37. While the Court does agree that this is a matter of public interest. The Claimant was a representative elected by the people of the Cayo Central Constituency and his actions as such must attract public interest and concern. The difficulty lies in proving that the statements made were based on facts.
38. No facts whatsoever have been provided to support the statements made. The sting of the statement lies in the portrayal of the Claimant as a corrupt participant in some kickback scheme. The author assured the readers that he knows exactly how it is done since he has been told. A particular recipient of contracts is given special treatment and benefits to the detriment of those more

deserving - behavior which is deemed to be jail worthy. Yet, he provides nothing to support this.

39. He urges that it was an editorial but that was never pleaded and there is nothing on the face of the paper itself to support this allegation. In fact, the evidence was that the author was unknown.
40. Further, this has nothing to do with hyperbolic style, sloppy journalism, or political slant. Moreover, it has even less to do with commentary or opinion since it is stated not as an opinion but to be factual and capable of proof. The issue of whether the statement was actuated by malice therefore becomes mute. But for what it's worth, at this juncture, malice had not been pleaded or particularized by the Claimant.

The Court finds that the defence of fair comment must fail.

A. Is the defence of justification available to the Defendants?

Claimant's Submissions:

41. The Claimants once again begin their assault with the Defendant's pleadings stating they failed to particularize which of the words complained of are statements of facts and the particular facts and matters relied upon in support of the allegation that the words are true. They then asked that the defence be struck out.
42. The Court repeats its observations made in regard to the defence of fair comment above. The Claimant then goes on to state that the law presumes that every person is of good repute until the contrary is proven. The burden of proof

that the words of which the Claimant complains are true or substantially true resides with the Defendant and they have failed to do so.

43. Not only did they provide no evidence to substantiate the allegations that the Claimant received a kickback or that Mr. Hernandez's bids were modified and pushed through by the Claimant or anyone else in the Ministry, but they failed to prove that the Claimant acted illegally in any way.
44. The evidence, as was revealed in the matter, was that the Claimant was not involved in the selection and award process, nor did he have a final say in the matter.
45. The Defendant's assertion that the **Finance and Audit (Reform) Act** had not been complied with and there was no Contractor General appointed to whom the duty to vet these types of contracts is mandated, rendering the contract illegal, had not been pleaded at all. Counsel asked the Court to strike this evidence from the record. Further, he reminded, Mr. Gentle had testified that the duties of the Contractor General had at that time been assigned to the Solicitor General.

Defendant's Submissions:

46. The Defence relied on Halsbury's Laws of England, Volume 28, paragraphs 83:
"Justification asserts that the sting of the defamatory statement in its proper context is true in substance and in fact. Where a plaintiff complains of words in part of a publication the defendant may refer to the whole publication in order to aver that in their context the words bore a meaning different from that alleged by the plaintiff and that in that meaning they are true. The defendant may not otherwise assert a version of the words which differs materially from the plaintiff's version and justify that version."

And 93: *“The Defendant is entitled to rely on facts which occurred after the publication of the words complained of, provided that they go to support the allegation made as at the time of publication.”*

47. Counsel countered that the following allegations were made in the article:

- “a) Imer Hernandez is given contracts to the sum of 134 Million to pave the coastal road.*
- b) That Rene Montero was involved in awarding the contract to Imer Hernandez to pave the Coastal Road.*
- c) That Imer Hernandez is given a number of contracts prior to being awarded the contract for the Coastal Road.*
- d) That Imer Hernandez sends in a bid to the relevant Ministry which is modified and pushed through while others are held back ensuring he gets the contract*
- e) That the process followed in awarding these contracts is illegal.*
- f) That because the process in awarding the contracts is illegal, people are going to go to jail.”*

47. She urged that the sting really was that the process of awarding contracts to Imer Hernandez was corrupt, and the Claimant was involved in that process. The evidence supports allegation a to c and allegation d had been verified with a contractor who was known personally by Mr. Rudon, the author of the article. As to e, Mr. Gentle’s evidence showed that the **Finance and Audit (Reform) Act section 19(5)** had not been complied with as the contract was for a sum exceeding five million dollars and had not been put to open tender as was mandated.

48. Both the Claimant and Mr. Gentle confirmed that the tendering procedure should have been adhered to. Moreover, the Claimant could not recall whether the contracts had been brought before the National Assembly or the authorization of the Minister of Finance had been published in the Gazette per the Act. Finally, Mr. Gentle testified that *“(I)t is only after the Contract General approves the contract that the Ministry of Works is given the approval to sign the contract on behalf of the Government of Belize.”*

49. However, under cross-examination, he admitted that there had been no Contractor General appointed at the time. It was only under re-examination that he informed that the Solicitor General was at that time seized of the Contractor General's duties. She found it peculiar that this was never stated in his examination-in-chief.

50. Counsel concluded that while there were some inaccuracies in the allegations which make out the sting, the requisite procedure to ensure that there was no corruption in awarding the contract had not been adhered to. So, the Claimant had been involved in the corrupt awarding of contracts.

Court's Consideration:

51. Contrary to what Counsel for the Defendant proposed, the sting for the Claimant was not just that he was involved in a corrupt process of awarding contracts but that he received kickbacks and somehow was involved in pushing Imer Hernandez's bids through while holding others back. There was not a single iota of evidence to prove this.

52. Belatedly, the issue of the procedure mandated under the **Finance and Audit (Reform) Act** was raised in cross-examination of the witnesses for the Claimant. It was never pleaded, yet Counsel for the Defendants submitted that the witnesses ought to have addressed it in their evidence-in-chief and the Claimant ought to have been able to answer questions related to that process for example whether it had been gazetted. I find this to be a most unfortunate way of proceeding.

53. The days of trial by ambush are long gone and this line of questioning had no significance as the allegation was never pleaded, when the Defendants attempted to plead justification that allegation should have been there, and it was not.
54. This Court finds that the defence of justification has not been made out and therefore fails.

Damages

Claimant's Submissions:

55. The Claimant says he is entitled to damages because his reputation has been injured. He presented evidence that the newspaper is widely circulated, it also appears on the internet, and he may have lost votes because of the article. He lost to his incumbent in the last elections.
56. Beside this, he suffered humiliation, distress and hurt. He sent a demand letter and expected there to be an apology or a retraction from the Defendants. Some of his constituents also expected to see an apology but there was none. This left people believing it must be true.
57. He said the Claimant's cross-examination was prolonged and hostile and sought to show he had done things which were illegal while he was a government minister. Even going so far as to question whether there was currently a warrant out for his arrest for his abuse of power during his political career. All this while knowing that evidence of bad character subsequent to the time of the slander is not admissible in mitigation.

58. The Defendants pursued a defence of justification which failed. That alone can found the basis of an award of aggravated damages. Counsel asked the Court to consider at paragraph 69 of his submissions “*In the case of Lois Young Barrow v Andrew Steinhauer and Belize Times press Ltd. No. 561 of 2006, the court awarded damages in the sum of \$30,000.00. In the case of Said Musa v Anne Marie and another No 305 of 2005, the court awarded damages of \$25,000.00. In the case of Sittee River Wildlife Reserve et al v Thomas Herskowitz et al, which involved a publication made on the internet, the court awarded \$30,000.00 and \$60,000.00 as general damages against the First and Second Defendant respectively and \$30,000.00 as aggravated damages. In the case of Rene Montero v Collett Montejo and Dynamic Media Company 38 of 2018 where the Claimant received a default judgment, the court awarded \$35,000.00 in general damages and \$5,000.00 in aggravated damages. In Karen Bevans v Prime Minister of Belize and RSV Limited the Claimant was awarded \$60,000.00 in general damages and \$30,000.00 in aggravated damages.*”

59. He submitted that jointly general and aggravated damages should be awarded in the sum of \$90,000.00.

Defendant’s Submissions:

60. The Defendants asked the Court to accept that the sting was always in the fact that the manner in which the contracts have been awarded was corrupt. This has already been rejected by the Court.

61. They ask that because the Defendants are members of the People’s United Party the editorials would support that party and a reasonable reader would be aware of this.

62. As a minister of government, he is not entitled to more damages than anyone else. His position is a factor not an overriding consideration - *George Price v*

Harry Lawrence et al Action No 272 of 1981 when applying ***Jagan v Burnham (1973) 20 WIR 96.***

63. They maintain that there has been no harm or damage to his character. He has been involved in a number of scandals over the years so the words complained of could cause no damage. There was no malicious motivation and so he ought not to get any aggravated damages.
64. The Claimant provided no evidence to show how many members of the public actually read the article and the mere posting on a public website is not proof that it was read by many - ***Anwar Barrow v Michael Rudon et al Claim No. 254 of 2018.*** The evidence presented by Mr. Banos that many persons approached him enquiring about the truth of its contents was not sufficient as Mr. Banos admitted being the Claimant's friend and he did not state the name of a single such person who allegedly approached him.
65. The Claimant also failed to show that he was held in less esteem by anyone. Mr. Banos' evidence again fell short as under cross-examination he admitted knowing his friend to be someone of honesty and integrity but would want the Court to believe that this one article could shake this conviction.
66. The Court was asked to consider the awards in ***Lois Young v Andrew Stienhauer and Belize Times Press Ltd No. 561 of 2006*** - \$30,000.00 and ***Said Musa v Ann Marie Williams Claim No 305 of 2005*** - \$25,000.00. They urged an award of \$15,000.00 for general damages and none for aggravated damages. These were fairly old cases, and the Court must take that into consideration as well.

The Court's Consideration:

67. The Court considers that the Claimant is a politician and that puts him in a category apart from an ordinary citizen not for the amount of any award of damages but for what he is to expect from the society. He is expected to be heavily scrutinized and definitely criticized.
68. The Court finds that the newspaper is a politically charged publication and those who are aware of this would realize that much may be said for impact. This does not in any way allow persons to pen or publish comments which are defamatory no matter the impetus or intent. The words have been found to be defamatory and the defences pursued have failed.
67. The Court finds that the Claimant is entitled to general damages without needing to show that actual damage has resulted. The law presumes that damage will flow ordinarily. So that Mr. Montero's right to general damages is presumed since there has been proof of defamation.
70. The Court has considered all the circumstances of this case and awards the Claimant \$30,000.00 in general damages. The Court finds that the Defendants' refusal to extract or apologize to the Claimant to be particularly aggravating. So, too, was the line of questioning taken under cross-examination which was referred to by the Claimant in his submissions. It was unnecessary and of no assistance to the Defendants. An award of \$5,000.00 is made. The Claimant is also entitled to the injunction he seeks and costs on the prescribed basis as had been agreed by the parties.

DISPOSITION

It is Ordered:

1. Judgment for the Claimant.
2. The sum of \$30,000.00 is awarded as damages against the Defendants for their defamatory publication against the Claimant.
3. Aggravated damages is awarded in the sum of \$5,000.00.
4. Interest on the total award at the assessed rate of 6% per annum from the 8th December, 2019, the date of publication to the date of judgment herein and thereafter at the statutory rate of 6% until the sum is paid in full.
5. Each of the Defendants, their agents or howsoever is hereby prohibited from repeating the defamatory words or any similar words to the effect of and concerning the Claimant.
6. Costs are awarded to the Claimant on the prescribed basis as agreed by the parties. I rely on Counsel on both sides to calculate and agree this figure.

SONYA YOUNG
SUPREME COURT JUDGE