

THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO. 142 of 2018

**MARK KING
BRINTS SECURITY LIMITED**

**FIRST CLAIMANT
SECOND CLAIMANT**

AND

MOSES SULPH

DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2018

30th October

Written Submissions

Claimant – 14th November

Defendant – 13th November

Decision

15th January, 2019

Mr. Estevan Perera along with Ms. Payal Gandwani for the Claimant.

Mr. Arthur Saldivar for the Defendant.

Keywords: Tort – Defamation – Published on Internet – Justification – Fair

Comment – General and Aggravated Damages - Injunction

JUDGMENT

1. A matter of this nature requires finding the balance between one citizen's right to freedom of expression and another's right to the protection of his reputation and good name.

2. Be reminded that although freedom of expression is a fundamental right in itself and an enabling right for the realization of a host of other rights, it is not absolute. It is curtailed for the purposes of upholding other human rights such as the right to dignity. While one is allowed to comment or criticize freely, it must be done honestly and without malice.
3. Be reminded also that the importance of a free, pluralistic and diverse media must never be diminished, but the media's right to free speech is no greater or smaller than any other member of the public. Even an activist has no special rights nor is he allowed any greater freedoms by virtue of his vocation.
4. Moses Sulph, a self-employed, self-styled Social Justice Leader, admits that in two postings on Facebook he published the following words on 18th January, 2018 and 9th February, 2018 respectively:
 - A. *"Mark King Expired Government Minister, Owner of Brints Security taking advantage of workers ...

Mother of 3 worked 8 hours a day for 10 days, after working she was only paid \$248 for 10 days.

Another Mother who worked for the same Company Drop down last week, upon visiting Social Security she found out there were no payments made on her behalf.

I have spoken to over 10 workers who works for MR. King and they all have the same problem of pay shortage every pay day. How do we expect people to provide for their families wit \$124 Belize a week, this is total madness and immoral. There are also those who collect \$300 after working 12 hour shift for 14 days."*
 - B. *"Also you still have workers who after a year still have not gotten any holiday or Holiday pay.

What you need to do is sign the lady form who got sick on your work site so she can get your Social Security pay out."*

5. Mark King, a businessman, politician and former Minister of Government, and Brints Security Ltd. (Brints) a security company owned by Mark King, say that these words were defamatory. They seek damages including aggravated damages and an injunction against further publication.
6. Moses Sulph vehemently denies the allegation. He raises the defence of justification in relation to the first post and fair comment on a matter of public interest in relation to the second. He pleads that he can substantiate and verify the truth of his statements and was therefore, entitled to ventilate his view thereon.

The issues for determination are:

1. Whether the words complained of are capable of bearing a defamatory meaning.
2. Whether the defence of justification is available to the Defendant for the first post.
3. Whether the defence of fair comment is available to the Defendant for the second post.
4. What, if any, remedies are available to the Claimant.

Whether the words complained of are capable of bearing a defamatory meaning:

7. Counsel for the Claimant helpfully quoted from **Halsbury's Laws of England**, Volume 28, paragraphs 42, 43 and 44 as referred to by Justice Abel in *Claim No. 131 of 2016 Sittee River Wildlife Reserve et al v Thomas Herskowitz et or at paragraph 19*:

[19] A defamatory statement has been broadly explained in the following terms:

“The essence of a defamatory statement is its tendency to injure the reputation of another person. There is no complete or comprehensive definition of what constitutes a defamatory statement, since the word “defamatory” is nowhere precisely defined. Generally speaking, a statement is defamatory of the person of whom it is published if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided...

In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning the test is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory sense...

Words may have not only a literal meaning but also an inferential meaning which goes beyond the literal meaning but is inherent in them and may depend upon the context in which they were published. The literal meaning and any inferential meaning are known as the natural and ordinary meaning....

The meaning of words for the purpose of the law of defamation is not a question of legal construction, since laymen will read into words an implication more freely than a lawyer. The meaning is that which the words would convey to ordinary persons. The ordinary person reads between the lines in light of his general knowledge and experience of worldly affairs...”

8. The learned judge continued in paragraph 20 by repeating the insight found in **Gatley on Libel and Slander 9th Ed [1998] at paragraph 26.20:**

[20] Where there is disagreement as to the reasonable meaning of the alleged defamatory statement, the standard which is used to resolve the dispute is “what meaning or meanings may reasonably be drawn from the words themselves in light of the ordinary man’s knowledge” the meaning of which the Claimant must specifically plead and allege the words to have.”

The Posts:

9. The Claimant says that with respect to the first post, *“in their natural and ordinary meaning, those words meant and were understood to mean that the Claimants were unfairly exploiting their employees by paying them below the labor rate and not making any contribution towards their employees’ social security benefits.”* Counsel for the Claimant urged that the ordinary man was well aware of the

minimum wage in Belize and could easily discern that what was being communicated as the employees' wages would fall below minimum.

10. The second post, according to the pleadings, would be understood to mean *"that the Claimant's employees have not been paid holiday pay or been given any holiday and that the first Claimant is refusing to assist his employees in obtaining their social security benefits, which the Defendant alleged in the First Post that the Claimants do not pay."*
11. Counsel for the Claimant concluded that the words used in both posts were plain and obvious and so it was highly unlikely that the ordinary man would have a different understanding of them. With this literal interpretation there would inevitably be a lowering of the Claimants' reputation among members of the public and an exposure to hatred and ridicule. Potentially, the second defendant could lose clients if its reputation was not redeemed.
12. Mark King testified that he has had to explain to various clients that the allegations were false. He also exhibited the comments which followed related posts by Moses Sulph where members of the public referred to him (Mark King) as idiot and scumbag, and the alleged behaviour as an injustice.
13. The Defendant offered no alternate interpretation of the words but he accepted, under cross examination, that he would not want to work for a company which treated its workers in this manner and would even boycott the business itself.
14. There can be no doubt that the posts were published by the Defendant and that both Claimants were clearly identified by name. The Defendant easily

admits publication but maintains that their contents are true or substantially true and where he expressed an opinion it was merely fair comment on a matter of public interest. Now, truth is a full defence to a defamation claim. This means that even where a statement may be defamatory, if it is true, it is not actionable. The Defendant seemed to be of the mistaken view that it was for the Claimant to prove that the published statements were false.

15. His Counsel, at paragraph 6 of his submissions, strangely quoted from a Nigerian case which speaks to falsity being integral to proving defamation. But his Counsel also relied on *Winfield and Jolowitz on Tort (13th ed, 1989) at pg 30*; *"It is not that the law has any special relish for the indiscriminate infliction of the truth on other people, but defamation is an injury to a man's reputation, and if people think the worse of him when they hear the truth about him that merely shows that his reputation has been reduced to its proper level."*
16. However, he does not quote paragraph 12-25 as well (the Court's reference is also *Winfield and Jolowitz on Tort* but the 17th ed) where under the rubric 'Justification (or Truth)' it begins: *"The Claimant does not need to prove that the statement is false, for the law presumes that in his favour. But the defendant can plead justification (the technical name for truth here) and if he can establish it by evidence he has a good defence"*
17. *Carter-Ruck on Libel and Privacy (6th ed) paragraph 9.2* explains that *"(t)he presumption of falsity has been justified on the grounds that it is necessary for the proper protection of reputation and also on the basis of an analogy between a defamation claimant and an accused in a criminal trial. The presumption of innocence should, so it is argued, apply both to defamation claimants and an accused in a criminal trial. While arguments exist in favour of abolition of the presumption, English Courts have rejected any change to the existing law..."*

18. Counsel for the Claimants also sought to give clarity when he makes reference to *Halsbury's Laws of England/Defamation (Volume 32(2012)) pg 582* and states "*Since the law presumes that every person is of good repute until the contrary is proved, it is for the defendant to plead and prove affirmatively that the defamatory words of which the Claimants complain are true or substantially true. The burden of proof is on the claimants to prove that the words complained of are false.*"
19. This Court accepts that the common law position has not been changed in Belize and the Nigerian position is therefore not applicable. With that said, this Court finds that the posts were clearly defamatory of both Claimants. The statements complained of obviously disparaged the reputation of both Claimants in relation to their business and the first Claimant personally. It made them out to be engaged in conduct which not only breached general business ethics but more egregiously, the law. The meaning of the words used was apparent and certainly opened the Claimants to ridicule, both actual and otherwise. We must now consider the defences raised.

Whether defence of justification is available to the Defendant for the first post:

20. The thrust of the defendant's evidence is that he had been told all that he published. He had no personal knowledge of the matter but believed his sources to be reliable and so simply repeated what he had been told. Although he asserts these allegations as facts, what he has proven at best is that certain allegations had been made. He has yet to prove that these allegations were true.
21. He sought support from a number of witnesses who seemed to have an honest contention with their former employer, the second Claimant and also

seemed to hold the first Claimant entirely responsible. But none of these witnesses provided any evidence other than their own words which tended to show that the allegations they made were true, even in substance. Not a single one showed where they lodged a formal complaint to the Labor Department, took any legal action whatsoever against the Second Claimant, or even produced so much as a letter they had sent to the Second Claimant agitating for what they say they had been unlawfully denied.

22. Jennifer Terry says she worked with Brints for four months without receiving holiday pay or overtime pay. Her pay was short and she was terminated without notice or reasons. She was unable to say what four months she worked, what she was paid and how much it had been short. She explained that they were not given payslips but said she kept a record of her hours etc in a book which she failed to produce.
23. Paul Moro says he worked for three months in 2017 without receiving overtime or holiday pay. He could not say what months he worked or how much he believed he was owed. He says he filed a claim with the Labour Department he provided no proof of this.
24. Lindy Young said she worked with Brints from May 2017 to 2018. There is no indication of the date her employment ended but she said she never received overtime, vacation or public holiday pay. She claimed that Brints did not sign her social security sick form within the allotted time so she received no benefits. She, however, never even said when the form had been submitted to Brints. She alleged having been terminated for getting sick.

Although she said she was in the process of taking legal action against Brints she provided no proof of this.

25. Counsel for the Defendant, in concluding his submissions, informed that Mr. Sulph "*published statements he believed to be the truth as he was informed by persons employed by the claimants and was justified in doing so.*" He clearly missed the mark, as this is certainly not sufficient to prove truth. An honest belief in a rumor cannot justify its repetition nor can it imbue the rumor with truth. What the law requires is proof of the fact of the imputation.
26. It was surprising that the disclosure process was not used vigorously to dislodge certain information if it did exist which may have been pertinent to the defence. To my mind the Defendant has not discharged his burden to the requisite standard and this defence must fail.

Whether the defence of fair comment is available to the Defendant for the second post:

27. The Court was not addressed on this issue by Counsel for the Defendant although it had been pleaded. Perhaps he realized the futility and opted not to make submissions. But the issue was live and Counsel for the Claimants made full submissions so the Court will briefly discuss.
28. Fair comment on a matter of public interest is also a defence to defamation. It is the recognition of every citizen's right to honest expression of his opinion on any matter of public concern, even if that opinion is wrong. It is considered vital to a democratic society. The defence relates only to comments not facts but the facts on which the comment is based must be

substantially true. The facts must also relate to a matter of public interest. These are the elements which must be proven to make a successful defence.

29. The second post is an intermingling of facts and commentary. Therefore the Defendant ought to have pleaded justification in regard to those facts. He did not and even if he did, he has certainly not proven their truth. Since he has failed to demonstrate the truth of the facts on which he relies and he cannot assume them to be true, his personal opinion on matters which are not true allows him no defence. His attempt to find shelter under fair commentary must fail.

What, if any, remedies are available to the Claimant:

30. The Claimants seek both general and aggravated damages. An award of damages in defamation cases are intended to compensate for the damage done to one's reputation and to vindicate one's good name. They are not intended to be punitive. The Court must consider the gravity and extent of the publication of the libel as well as the consequential hurt and humiliation caused. The Defendant's motive and his conduct after the defamation has been brought to his attention is equally important in this assessment.

Gravity and evidence of harm:

31. The Claimants assert that what had been alleged in those posts amount to criminal offences which are punishable by fine or imprisonment. This must necessarily impact the second Claimant's ability to attract employees and to keep current clients or attract new ones. The first Claimant has shown the comments made by the public after the posts, evidencing the contempt with which many now regard him. He says he aspires to contest the next national

elections and he has been humiliated, to say the least. The reputations of both Claimants have undoubtedly been affected and must be redeemed.

Extent:

32. The posts were published on Facebook. The page has over 500 followers. The second post was shared in a Facebook group called Belize Buy and Sell with 141,000 members. This is significant and the Court is allowed to infer that a substantial number of persons within the jurisdiction accessed the post.

Aggravation:

33. Counsel for the Claimants drew the Court's attention to the fact that after the first post the Claimants sent a letter to Mr. Sulph informing that the allegations were false and seeking the removal of the post and an apology. Neither was forthcoming. Instead, a second post was published which also contained defamatory material. In that post the Defendant made it clear that he had received the letter but would not comply.
34. Mr. Sulph admitted to making contact with the Claimants' counsel but neglected to seek verification of the allegations. In fact the second post shows that he solicited employees of the first Claimant to make contact with him. Even when the Claimants issued suit against him he insisted on the defences of justification and fair comment but failed to establish either. Counsel submitted that this conduct can sufficiently ground the Claimants' case for aggravated damages. This Court agrees. He offered a total sum of not less than \$25,000.00 as damages.

Comparables:

35. Counsel for the Claimants presented the following comparables:

Lois Young Barrow v Andrew Steinhauer and Belize Times Press Ltd Claim No. 561 of 2006 where the Court awarded damages in the sum of \$30,000.00.

Said Musa v Anne Marie and Another Claim No. 305 of 2005 where damages in the sum of \$25,000.00 was awarded.

Sittee River Wildlife Reserve et al v Thomas Herskowitz et al (ibid) which involved a publication on the internet. Awards of general damages in the sums of \$30,000.00 and \$60,000.00 to the first and second Defendants respectively and aggravated damages in the sum of \$30,000.00 were made.

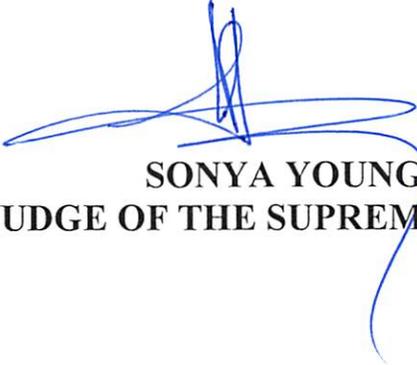
36. The Court will also consider its own decision in *Anwar Barrow v Michael Rudon and the Times Newspaper Limited Claim No 254 of 2018* where \$40,000.00 was awarded as general damages and \$10,000.00 as aggravated damages. This was a default judgment also involving publication on the internet.

Determination:

37. The Court considers the Defendant's motive and while misguided he seemed intent on producing some positive result for persons he honestly believed had been wronged. I could find nothing overtly malicious. This ought to be a cautionary though unfortunate tale for those who propose to publish before proper verification. But the damage has been done and must be vindicated. This court finds the sum of \$30,000.00 to be fair in the circumstances. The Court also finds that since the Defendant refused to remove the offending posts voluntarily, the Claimants are entitled to the injunction sought.

Disposition

1. Judgment for the Claimant.
2. The sum of \$20,000.00 is awarded as damages against the Defendant for his defamatory publications against the Claimants.
3. Aggravated damages are awarded in the sum of \$10,000.00.
4. Interest is awarded on the total amount at the rate of 6% per annum from the 18th January, 2018 to the date of judgment herein and thereafter at the statutory rate of 6% until payment in full.
5. The Defendant or his servants or agents or otherwise are hereby restrained from further publishing or causing to be published the same defamatory words or similar words to the effect of and concerning the Claimant.
6. Costs is awarded to the Claimants in the sum of \$10,000.00 as agreed.



SONYA YOUNG
JUDGE OF THE SUPREME COURT