

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO. 254 of 2018

ANWAR BARROW

CLAIMANT

AND

**MICHAEL RUDON
TIMES NEWSPAPER LIMITED**

**FIRST DEFENDANT
SECOND DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Written Submissions

Claimant – 9th July, 2018

Decision

24th September, 2018

Mr. Rodwell R.A. Williams, S.C., C.B.E. for the Claimant.

**Keywords: Default Judgment – Tort – Defamation- Newspaper - Businessman
- Assessment of Damages – Malicious Intent – Aggravated Damages**

JUDGMENT

1. Default Judgment was entered for the Claimant against the Defendants, the terms of which will be determined by the Court herein. The Claimant is a well-known businessman and son of the Prime Minister of Belize. The first Defendant is the Editor of The Belize Times which is owned and published by the second Defendant. Together, the Defendants operate accounts on the worldwide web known as “The Belize Times Press” on the websites ISSU and Facebook. These sites are accessible to users worldwide.

2. Mr. Barrow in his claim, complained of certain words, published in the Belize Times Press, which he says are defamatory and have been accessed and read by a substantial number of users. The ISSU account has 97 followers while the Facebook account has 7,202. This means that the publication was visible to a number of persons. It in fact had been shared twenty times and liked nine times by the Facebook users when the claim was filed.

3. The offending words were published on or around the 17th November, 2017 as follows:

“Tangled web ..

It’s interesting how things play out in politics. Gapi Vega has become the poster child for corruption and greed in the UDP. The First Son and my new idol, the sweet and sexy woman-magnet Juliet are now controlling things in the Ministry of Natural Resources, raking in whatever was left by the Vegas. But how did this come to pass? Well, the word is that when Gapi was Minister, Anwar was put in check where several very lucrative land deals were concerned. Anwar went to daddy, and that’s when Gapi was removed from the Ministry. Gapi feels that not satisfied with that, Anwar conspired with his close friend Vanessa Retreage when she became Minister of Lands to find and release land documents which would destroy him. And that’s when a message was sent from the Vega clan to Retreage threatening her and her son. Word to this decrepit script is that Gapi also has plans for the First Son, and we don’t mean plans he’ll enjoy. I’m very interested to see how this one plays out.”

4. Mr. Barrow claims that in their natural and ordinary meaning the words are meant and are understood to mean that he:

- (a) exercises control over the Ministry of National Resources;
- (b) is corrupt and used his purported control for personal gain;
- (c) used this purported control to have Gaspar Vega, the then Minister of Natural Resources, removed;
- (d) had been prevented from carrying out general corrupt land transactions;
- (e) contrived with the former Minister of Lands Ms. Vanessa Retreage to clandestinely acquire the release of confidential documents with the

intent to damage Mr. Gasper Vega's reputation.
Or alternatively by innuendo that he:

- (a) used his relationship with the Prime Minister to remove Gasper Vega, the then Minister of Lands.
 - (b) is receiving the remnants of the corruption or benefiting from what was left by Gasper Vega at the Ministry of Natural Resources.
- (5) He pleads further that the contents of the publication are entirely false, have seriously harmed his reputation and have caused him hurt, distress and embarrassment. He seeks an injunction and aggravated damages.
 - (6) He became aware of the Article after several persons including staff, friends and business associates brought it to his attention. Mr. Barrow explains that he owns a chain of finance companies in Belize. His integrity and honesty are the fundamentals of his success in business and his record remains impeccable. He extols his accomplishments and his previous appointments. Notably being the Chief Executive Officer of Belize Telemedia Ltd, one of the largest corporations in Belize.
 - (7) He has informed the Defendants, in writing, that the words complained of are entirely false and twice sought an apology and public retraction. To date, despite having ample opportunity, there has been no response whether in the form of an apology or otherwise. The offending Articles remain on both the Facebook and ISSU pages and he continues to be questioned about their content by third parties.
 - (8) While he expects and accepts a certain level of political commentary about himself due to his father's public role, he is certain that this ought not to

include attempts to smear and discredit him. More alarming for him was the idea of there existing a physical threat of harm to him personally.

- (9) In his affidavit, Mr. Barrow expresses the belief that the publications were motivated by malice derived solely from the circumstances of his heritage. He also pleaded that the defendants seemed to have a penchant *“for defaming persons who are connected to the United Democratic Party and have wrote defamatory material of the Claimant on several occasions prior”*.
- (10) He attached a number of prior publications issued by the Defendants which he says are similarly offensive but which he has chosen not to pursue through the court system. He also mentioned other Supreme Court of Belize judgments in favour of his mother, father or himself against the Defendant for libel.
- (11) The issues for the court to determine are:
 1. Are the words complained of defamatory
 2. If the words are defamatory, what damages are the Claimant entitled to

Are the words complained of defamatory:

- (12) The Court has considered the words complained of and find that the defamatory meaning alleged is a reasonable interpretation. Anwar is mentioned by name, Gaspar Vega’s alleged extraordinary degree of corruption is juxtaposed with Anwar’s acts after Vega’s removal, the genesis of and rationale for Vega’s removal is explained, so too are the various corrupt alliances Anwar formed to further his agenda.
- (13) The Court also finds evidence that the words were published. The publication, including the offending Article had been posted, accessed and liked by the Facebook users. Moreover, the Claimant attests that a number

of persons within the jurisdiction brought the Article to his attention and continue to question him about its contents, even now.

- (14) The Defendants have chosen not to defend and so the Court need consider the matter no further. As stated at paragraph 84 of **Vladimir Sloutsker v Olga Romanova[2015] EWHC 2053 (QB)** which concerned a default judgment on a defamation matter:

“However, CPR 12.11(1) provides that: “where a claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case. “This rule enables the court to proceed on the basis of the claimant’s unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant’s allegations... Examination of the merits will usually involve unnecessary expenditure of time and resources and hence contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment ...”

“I recognize that the general approach outlined above could need modification in an appropriate case, for instance if the Court concluded that the Claimant’s interpretation of the words complained of was wildly extravagant and impossible, or the words were clearly not defamatory in their tendency.”

- (15) The reference to CPR 12.11(1) is to the UK Civil Procedure rules. To my mind our own rule 12.10(4) bears the same interpretation, so this Court will not hesitate to adapt a similar approach and move swiftly now to the assessment of damages.

Assessment:

- (16) Counsel for the Claimant begun his most helpful submissions with the sacrosanct principle that the award of damages in case of defamation ought to be compensatory in nature. The aim being to put the Claimant, as far as possible in the same position he would have been in had there been no publication of the libelous material. He quoted from **John v MGN Ltd [1996] 2 All ER 35 at page 47-48:**

The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sums as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as 'he', all this of course applies to women just as much as men. [emphasis added].

- (17) The Court will therefore seek to compensate Mr. Barrow for the injury done to his reputation and to his feelings. Any aggravating factors will also be considered so that a determination that is not only compensatory but also, vindicatory could be made if deemed necessary.

Gravity:

- (18) Counsel has asked that the libel complained of be viewed as the most "serious of sorts" because it attacks the Claimant's personal integrity, professional reputation and other core attributes. As he puts it "(he) is painted as a reprobate of the highest order." I do agree than what is presented in this matter does strike at the heart of Mr. Barrow's reputation. He is engaged in the finance business where honesty and integrity are the corner stones. To undermine that in anyway must have a serious effect on him personally and professionally. Then to impute corruption at such a scale and involving other government officials really exacerbates the matter. There has been

deliberately laid out for public consumption, (after the author's reflection on content) a web of depravity with not even the least amount of tangible evidence being provided to support any part of it where this claim stands undefended.

Extent of Publication:

- (19) The Article was published on the worldwide web from the two sites and it has been pleaded that a substantial number of users have accessed it and read the offending words. There is no presumption in law that the mere placing of an article on a public website is proof of publication to a substantial number of persons within the jurisdiction, see *Al Amoundi v Brisard and another [2007] 1 WLR 113*. But availability on the internet is a certain indication that its reach and effect are not greatly restricted.
- (20) I find sufficient has been provided from which the Court could reasonably infer that a substantial number of persons within the jurisdiction accessed the article. The article was published in a Belize named publication whose contents relate mainly to Belizeans and those resident or connected to Belize. The offending article itself focused on high profile Belizeans and corruption. That makes for sensationalism and heightened interest. A number of persons within Belize brought the article to the Claimant's attention. All of this, taken in light of the 7,437 persons who liked the Facebook publication (see Tab B attached to the affidavit of Anwar Barrow filed on the 9th July, 2018), makes it a fairly easy and appropriate inference to make.

Evidence of Harm:

- (21) From the Court's discussion on the gravity of the libel it is obvious that significant harm would be inferred. When all is said and done, all that a man really owns is his good name and Mr. Barrow's has been ravaged by the Defendants. He explains that he was disturbed and embarrassed. He has been ridiculed by those he considers reasonable. He deserves to be vindicated by the restoration of his pride and reputation.

Aggravation:

- (22) No apology whether private or public was ever made by the Defendants. In fact, the Claimant's pre-action letters were ignored. The offensive article remains on both websites to date. This certainly aggravates the damages.
- (23) The Claimant asks that several other offensive publications be considered either as proof of malice or a pattern of reprehensible behaviour. While this may show the Defendants' state of mind, it is not indicative of intent at the time of publication. More importantly, **Halsbury Laws of England/Defamation (Volume 32 (2012))/3 paragraph 751** while discussing the possibility of a Defendant's actual malice aggravating the damages, explains: *'if the evidence incidentally establishes another cause of action, the jury should be cautioned against awarding damages in respect of it.... If the evidence is offered merely for the purpose of obtaining such damages, it will be properly rejected.'*
- (24) By his own admission the Claimant felt the other publications were defamatory but he had chosen not to pursue that course. I therefore do not believe it wise to award aggravated damages as a result of any malicious

intent. The Court also has no intention of effectively chilling journalistic freedom on matters.

- (25) The Claimant also submits that previous judgments against the Defendants remain unsatisfied to date. I state clearly that this is neither the time nor place for unsatisfied judgments to be discussed, considered or addressed.

Assessment:

- (26) Damages in defamation cases are said to be at large but consideration could still be made of comparative decisions in the jurisdiction. Counsel presented as comparatives *Lois Young Barrow v Andrew Steinhart, Belize Times Press Limited Claim No.561 of 2006*. Here a senior attorney (Anwar Barrow's mother) was described as greedy, hypocritical and malicious which imputed that her fees were unconscionable and extortionate and she was money grabbing, unethical, unprincipled and amoral. She was awarded \$30,000.
- (27) *Robert Garcia v Andrew Steinhart and Belize Times. John Flowers v Andrew Stienhauer and Belize Times Limited Claims No. 4 and 5 of 2006*. Both Claimants were found to have been defamed in an editorial as being incompetent, dishonest, and fraudulent, cruel and unconscionable towards staff and generally to have mismanaged the company and sabotaged its operations. Mr. Garcia was the General Manager while Mr. Flowers was the Operations Manager. They were each awarded \$30,000 upon discussion of the **Lois Young Barrow case** (above) and the **Said Musa case** (below).
- (28) The Court noted at paragraph 48 that although “(i) t is desirable to award the same or similar damages for wrong in the same tort in the same jurisdiction, unless there

are particular facts which warrant departure ... over time higher damages may be awarded to take into account inflation.”

- (29) ***Said Musa v Ann Marie Williams, Harry Lawrence & Reporter Press Ltd. Claim No. 376 of 2005.*** The then Prime Minister of Belize had been defamed in an editorial where it was disclosed that he had committed illegal acts; written off \$16 million in back taxes in exchange for which he received funding for his campaign; was a man of disrepute who had abused his office and position for political purposes and personal motives, was corrupt and dishonest. The Court gave an award of \$25,000 while acknowledging at paragraph 50 that although “*the Claimant by his very position is subject to intense public scrutiny and comments and criticisms ... this must not be a licence for unfounded and unsubstantiated attacks on him.*” No comparables were discussed.
- (30) ***Belize Times & Amalia Mai v Manuel Esquivel, Civil Appeal No. 7 of 1993*** the Prime Minister and Minister of Finance was vindicated with an award of \$25,000 which the Court of Appeal upheld. The published front page article was understood to mean that the Prime Minister was dishonest, untruthful, deceitful, had used his office to dishonestly enrich himself in breach of the public trust and had had lied after buying for his own benefit shares worth \$300,000 in Belize Hotels Development Limited
- (31) ***Sittee River Wildlife Reserve et al v Thomas Hershowitz & Independent Owners of Sanctuary Belize Claim No. 131 of 2016.*** The Claimants, real estate developer and realtor had been defamed in a letter written to the President of the Institute of Chartered Accountants of Belize and published on the Second Defendant’s website and Facebook page along with other statements. They were said to have been dishonest and fraudulent in relation to the Sanctuary Belize Project. They had swindled home owners, illegally

foreclosed, stolen sales tax and misappropriated or embezzled project money, while engaging a known felon as a business associate. They were awarded a total of \$90,000.00 general damages (\$30,000 to the first and \$60,000 to the second), plus \$30,000.00 aggravated damages (to the second). No comparables were discussed.

- (32) Counsel urged that as there seemed to be no real uniformity in the awards made, this Court ought to consider \$30,000 as a minimum only. Particularly since there was very little reference to decided cases within the jurisdiction and most of the cases are of some vintage. He urged that the assessment begin no lower than \$40,000 and submitted \$50,000 as fair when the socio economic conditions of Belize are considered.
- (33) The Court having considered the comparables provided and the circumstances of this case finds an award of \$40,000 to be appropriate compensation for the distress caused and for the vindication of Mr. Barrow's reputation. The court also considered that the Defendants have refused to apologize or to remove the offending material and an injunction against the continued or repeat publication will also be ordered.

Determination:

- (34) Accordingly, default judgment is entered for the Claimant in the following terms:
1. The sum of \$40,000 is awarded as damages against the Defendants for their defamatory publication against the Claimant.
 2. Aggravated damages in the sum of \$10,000.00.
 3. Interest on the total award at the rate of 6% per annum from the 17th November, 2017, the date of publication to the date of judgment herein

and thereafter at the statutory rate of 6% per annum until the sum is paid in full.

4. Each of the Defendants or agents or howsoever is hereby prohibited from repeating the defamatory words or any similar words to the effect of and concerning the Claimant.
5. Costs is awarded to the Claimant on the prescribed basis. I rely on Counsel to calculate.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**