

**IN THE SUPREME COURT OF BELIZE, A.D. 2019**

**CLAIM NO. 813 OF 2019**

**BETWEEN**

**SHABIR WALJI**

**FIRST CLAIMANT**

**NASIR WALJI**

**SECOND CLAIMANT**

**QAISAR MAHDI**

**THIRD CLAIMANT**

**LAS TERRAZAS (BELIZE) LIMITED**

**FOURTH CLAIMANT**

**AND**

**DAVID TITLE**

**DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

**Decision Date:**

18<sup>th</sup> August 2022

**Appearances:**

Ms. Stacey Castillo, Counsel for Claimants.

Mr. Linden Jones, Counsel for Defendant.

**KEYWORDS: Defamation - Libel - Email Publication - Meaning of words in  
Publication - Whether Capable of Meaning Claimed - Scope of Publication -  
Consideration of the Facts of Each Case - Slander - Damages - Counterclaim -  
Fraudulent Misrepresentation - Defamation - Justification**

## JUDGMENT

1. Mr. Title and Ms. Cortes bought from and now occupy a residential unit in a strata development, Las Terrazas (Belize) Ltd. (Las Terrazas). The First and Second Claimants say they are Directors of Las Terrazas and the Third Claimant is its Financial Controller.
2. The Claimants allege that the Defendant has defamed them all through various oral and/or written statements made to various persons. These statements allege dishonesty, conspiracy, fraud, and theft. As a result, Messrs. Walji and Mahdi have suffered hurt, distress, and embarrassment while Las Terrazas has seen serious financial loss with respect to business as well as serious reputational harm.
3. They all seek damages including aggravated damages with interests, an injunction, and costs.
4. In his Defence, Mr. Title does not deny making the statements, but he denies liability. He says the statements could not be understood to bear the meaning which the Claimants alleged or that none of them suffered any loss or harm. There was no plea of justification.
5. However, he counterclaimed for fraudulent misrepresentation and defamation. He alleged that the First Claimant, acting on behalf of the Fourth Claimant, indicated a closing cost for the purchase of his strata lot and the Defendant made payment accordingly. Having fired the Defendant's real estate agent, the First

Claimant then informed that there had been an error in the calculations which saw an increase of USD\$21,021.68 in stamp duties.

6. The Defendant was forced to pay this increase, or he would not be allowed to enter his property. He subsequently found out that the increase was due to an amendment to the Stamp Duties Act which took effect in November 2017 although he had already paid in full by October 2017.
7. When he repeatedly questioned the financials of the Fourth Defendant regarding certain fees which were being charged as strata fees, he was defamed by the Fourth Defendant. This caused him to suffer hurt, distress, and embarrassment. He too seeks damages with costs.
8. The Claimants admit the statements referred to by the Defendant, their publication, and their meaning as alleged by the Defendant. However, they counter that the contents are true and accurate in every regard and the Defendant has suffered no harm to his reputation.

**The Issues:**

**On the Claim:**

1. Whether the words complained of are defamatory?
2. If they are defamatory, what reliefs are the Claimants entitled to?
  - A. What quantum of damages should be awarded to the Claimants?
  - B. Whether aggravated damages should be awarded?
  - C. Whether interest should be ordered?
  - D. Whether an injunction is necessary?
  - E. What cost order should be made?

### **On the Counterclaim:**

1. Whether the representation identified by the Defendant was a fraudulent misrepresentation?
2. If a fraudulent misrepresentation is made out, whether the Defendant is entitled to damages and in what quantum?
3. Whether the words complained of are defamatory?
4. Is the Defence of justification available to the Claimants?
5. Whether the Defendant is entitled to damages and in what quantum?

### **The Claim**

#### **Whether the words complained of are defamatory:**

9. All parties relied on *Anderson v The Chief Executive Officer of the Ministry of Health et al, Claim No 484 of 2014* for a succinct statement of the elements of defamation. At paragraph 6 Griffith J explained:

*“Defamation is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the claimant.’ That being said, it is important to grasp that the gravamen of the tort is harm caused to a person’s reputation. As correctly stated by Counsel for the Claimant, there are three elements which must be proven in order for the tort of defamation to be established. There are”*

- (i) *The statement must be defamatory;*
- (ii) *The statement must refer to the Claimant;*
- (iii) *The statement must be published, i.e. – communicated to at least one other person than the Claimant.’*

*Griffith J further set out the law pertaining to the first question of whether the words complained of are capable of bearing a defamatory meaning:*

*‘The law pertaining to the first question whether the words complained of are capable of bearing a defamatory meaning, is generally reduced to three well known formulae.*

*These are statements which*

- (i) *tend to lower a person in the estimation of right-thinking members of society generally;*  
*or*
- (ii) *tend to cause others to shun or avoid the claimant; or*
- (iii) *expose the claimant to hatred, contempt, or ridicule. there is also a defamatory meaning to be found where words can cause injury to persons’ trade, profession or office.’”*

10. The Claimants in this case complained of four separate emails as well as certain words allegedly spoken by the Defendant in the presence of Juan Pop. There is no issue before this Court of whether or not the Defendant sent the emails. This was never pleaded and forms no part of the Pre-trial Memorandum agreed to by the parties.
11. So, using the test above let us consider each email in turn.

### **The Libel:**

12. Email 1:

*“From: David Title [david@prokuron.com](mailto:david@prokuron.com)*

*Sent: Monday, April 1, 2019 12:14 PM*

*To: John Powers [john.powers@fanagroup.com](mailto:john.powers@fanagroup.com)*

*Subject: Re: Truman please forward this email to everybody I look forward to seeing everyone especially you and your wife is gonna be a beautiful night*

*Sorry, John, it's simple but strange.*

*Nothing was wrong, just gave the man a check for \$10k, my wife was in an awful car accident so we went to order from the restaurant. So the bill came and our discount was not on the bill? So when I asked the Mgr about he said that Nasir came in before he departed and removed our discount to zero?*

*Interesting don't you think?*

*Why is it that not you John, but all the involved parties continue to intentionally attack us like this? The actions and aggressive antagonize just continues non stop John, why?*

*We purchased this place in good faith, paid for it in full, for what to be attacked and beaten down? Should I attack back John? Let's say I actually decided to be open and advise Trip Advisor, all travel agency and maybe put an add in every newspaper, magazine, internet with the actual truth and supporting documents as to what's going on? John, being truthful is not slander or making false statements under civil law or criminal law just in case someone is thinking of putting an action against us or plotting something devious!*

*So my friend yes its been a while I hope you and family are well, it would be nice one day that I could just send you a msg saying hello with great news instead of this crap, agreed my friend?*

*Looking forward to hearing back from you. Oh, regarding all the over charges and still not accounted where \$34k USD went that were on our account is still not resolved with Quasir, I have been trying, maybe you can help clear this up as well and take over this part since your a numbers guys?*

*Warm regards,  
David/Paola”*

13. The Second Claimant alleges that this email meant that the Defendant had been attacked by and aggressively antagonized by the Second Claimant.

14. An honest balance must be struck between freedom of expression and defamation (*Anderson (ibid)*). While these words have admittedly been published and refer quite clearly to the Second Claimant, I can find nothing in them which would lower him in the eyes of any right-thinking member of society. These words are clearly the rants and venting of a very upset and frustrated lot owner and anyone reading them would see them for what they are. This claim fails.

15. Email 2:

*“From: David Title [david@prokuron.com](mailto:david@prokuron.com)*

*Sent: Monday, April 1, 2019 12:14 PM*

*To: John Powers [john.powers@fanagroup.com](mailto:john.powers@fanagroup.com)*

*Subject: Re: Truman please forward this email to everybody I look forward to seeing everyone especially you and your wife is gonna be a beautiful night*

*John with all due respect the man is not telling the truth I have a picture of his signature notification in a book from the restaurant where he’s removed the discount so I’m not sure why he will be giving you incorrect information maybe you should tell him that I have a picture from the book that he signed The book. John pretty well there’s no point in bullshitting and going to Rose in the crap is not worth it you know what I know I don’t believe in it hate it so why would I make something up for second do you think that I would make something up can you let me know have a problem my phone receiving phone calls there’s a problem with cell network down here so if you’re free for a call email me back I’ll call you.*

*Sorry for any spelling or grammar errors as I use voice email to send it back as my hands are a little busy.”*

16. The same applies here. There is nothing which would lower the Second Claimant in the eyes of any right-thinking member of society. So what if he removed his discount? And equally so, so what if he did not? So what if he lied or did not lie, signed, or did not sign?
17. That seems to be a very personal, even insignificant issue in the grand scheme of things which could be easily remedied between the parties. It is not the type of statement which ought to occupy the Court's time as an allegation of libel. The Court wishes the available arsenal had been used early to remove these two allegations. This claim also fails.
18. Email 3:

*“From: David Title*

*Sent: October 2, 2019 7:00 PM*

*To: 'Truman Davis' [trumondavis@gmail.com](mailto:trumondavis@gmail.com)*

*Cc: Qaisar Mahdi [mahdi@camdenhg.com](mailto:mahdi@camdenhg.com); [hdgy89@hotmail.com](mailto:hdgy89@hotmail.com);  
[paolacortes@hotmail.com](mailto:paolacortes@hotmail.com); [alfred@alfredgarfield.co.uk](mailto:alfred@alfredgarfield.co.uk); [cindyliou@gmail.com](mailto:cindyliou@gmail.com);  
[sharon.wong@blakes.com](mailto:sharon.wong@blakes.com); [Rydell.Ohryn@huskyenergy.com](mailto:Rydell.Ohryn@huskyenergy.com); [cmatisho@gmail.com](mailto:cmatisho@gmail.com);  
Lawrie Deering [iscribbleon@gmail.com](mailto:iscribbleon@gmail.com); [dh@dennishaefner.com](mailto:dh@dennishaefner.com); Robert Orta  
[orta\\_robert@yahoo.com](mailto:orta_robert@yahoo.com); [tazinvestments@aol.com](mailto:tazinvestments@aol.com); [nursekelly@yahoo.com](mailto:nursekelly@yahoo.com);  
[smcgh@hotmail.com](mailto:smcgh@hotmail.com); Brent Crandall [crandall63@yahoo.com](mailto:crandall63@yahoo.com);  
[orthomedhouston@yahoo.com](mailto:orthomedhouston@yahoo.com); [aeslall@sbcglobal.net](mailto:aeslall@sbcglobal.net); [agentjennifer@yahoo.com](mailto:agentjennifer@yahoo.com); W  
Scott Proctor [proctorsresco@sbcglobal.net](mailto:proctorsresco@sbcglobal.net); daren tietsort dt [1948@bellsouth.net](mailto:1948@bellsouth.net); Stewart  
Stephenson [art@stewardstephenson.com](mailto:art@stewardstephenson.com); [teajessica@windstream.net](mailto:teajessica@windstream.net);  
[jfootdoc@bellsouth.net](mailto:jfootdoc@bellsouth.net); Scott Sneider [sschneider42@gmail.com](mailto:sschneider42@gmail.com); Kyle Wenger Integrity  
Crane [cranetech\\_44706@yahoo.com](mailto:cranetech_44706@yahoo.com); David Title [david@prokuron.com](mailto:david@prokuron.com)*

*Subject: RE: General Strata Plan (Las Terrazas) NOTICE OF SPECIAL GENERAL MEETING Oct 25, 2019*

*Importance: High*

*Qaisar, just by fluke looking at all our paper work yesterday evening and looked carefully at it then under a magnifier and saw that your signature was the LEGAL Intre,lau on the document, I almost shit myself. You knew exactly all this time what the fuck went down, you were in our home ate our food had a drink and you looked into my face and feed myself and my wife that you have NO CLUE NOR IDEA about this? And truth is that on December 29, 2017 for our purchase that we PAID IN FULL WAY BACK IN OCTOBER 2017 you the*

*MONEY MAN IN CHARGE OF MY INVESTMENT KNEW the truth and you're working hard that your blinded and stupid about a document that your legal signature is on? What kind of Man sits face to face and LIE that just screwed me hard \$21,000.00 US DOLLARS THAT ACTUALLY COST ME OVER \$50,000.00 converted from Canadian. In my world my friend when someone plays me for a foul and scams my and fails to be truthful its very appropriate and professional."*

19. This statement is different. There are implications of a scam or some fraud which caused the Defendant to lose USD\$21,000.00. It has admittedly been published to persons other than, and refers directly to, the Third Claimant.
20. There is no way that an allegation of this nature would not tend to lower the alleged perpetrator in the eyes of his fellow man. It may even expose him to ridicule and hate. The Third Claimant is in the field of finance, and this could seriously impact his professional reputation. His honesty is the foundation of his livelihood. A libel has certainly been made out.
21. Email 4:

*"Subject: Warned you all if you screw me well its your ugly problem now (November 10<sup>th</sup> 2017) US/CDN I am considering sending this to all Owners (OUR CURRENT BOARD IS REMOVED AND FIRED EFFECTIVE OCTOBER 4, 2019) A new board will voted in by the Owners in 36 hour*

**From:** David Title [<mailto:david@prokuron.com>]

**Sent:** Friday, October 4, 2019 10:30 PM

**To:** Qaisar Mahdi [mahdi@camdenhg.com](mailto:mahdi@camdenhg.com); Qaisar Mahdi [mahdi@lasterrazasbelize.com](mailto:mahdi@lasterrazasbelize.com); [smahadir@century21belize.com](mailto:smahadir@century21belize.com) [smahabir@century21belize.com](mailto:smahabir@century21belize.com); Shabir Walji [swalji@camdenhg.com](mailto:swalji@camdenhg.com); Nasir Walji [nwalji@camdenhg.com](mailto:nwalji@camdenhg.com)

**Cc:** David Title [david@prokuron.com](mailto:david@prokuron.com); GM [gm@lasterrazasbelize.com](mailto:gm@lasterrazasbelize.com)

**Subject:** Warned you all if you screw me well its your ugly problem now (November 10<sup>th</sup> 2017) US/CDN I am considering sending this to all Owners (OUR CURRENT BOARD IS REMOVED AND FIRED EFFECTIVE OCTOBER 4, 2019) A new board will voted in by the Owners in 36 hour

**Importance:** High

**Sensitivity:** Personal



*Approved for Charges to be laid against said persons below,*

*Good evening to all, I'm sorry to everyone and very sad that I'm sending this email but its extremely urgent regardless how uncomfortable it may be for myself, but its best to be straight upfront and truthful.*

*Today October 4<sup>th</sup>, 2019 I have spent most of the day dealing with an issue that's been brought up in conversation & emails countless times with mainly failed responses and just ignored by everyone.*

*The persons names listed here Under the Criminal Code of the U.S.A. Laws & Under the Criminal Code of Canada & Under the Criminal Code of Belize (US Citizen Mr. Mahdi) (Dual Citizenship Mr. Nazir Walji) (Dual Citizenship Mr. Shabir Walji) (Citizen of Belize Ms. Saira Mahabir) Have all knowingly together planed and executed municipal Acts of Extreme Illegal and Criminal Activity Under the Criminal Code In the United States of America & Canada, as each have participated in the Fraudulent undertakings against Mr. David Title and Ms. Paola Cortes and have attempted to cover-up there direct crimes.*

*The Exhibits 1-16 against each person does prove and shows the clear evidence headed by the Sr. Walji Brother Shabir Ring Leader & Jr. Walji Brother Nazir the traveler whom collects the cash funds. US Citizen Mr. Mahdi CFO & diverter who receives the stolen funds takes over the scam against Title diverting Title by lies and deception to others that have doctored paper work. All the emails and documents support the necessary need for the authorities in all three countries just cause for the warrants of arrests and charged criminally under the laws under the criminal codes listed below, and if the authorities find further cause for further to be laid this is the discretion under there control.*

*Approval for the necessary warrants to be issued and approved by the Justice on 8<sup>th</sup> of October 2019 requiring the final signature by notary stamp of Mr. David Title for the commencement as the complainant.*

*I'm heading to the Capital in Belize City to meet with the Crown Attorney to follow suite of Canada & USA to apply the same application against the Walji Brothers, Mr. Mahdi upon there arrival into the Country of Belize.*

*For there arrest and incarceration into Federal Prison as they are a danger and flight risk never to return to the Country of Belize under any court issued orders. Monday morning*

***US. Code Chapter 47 – Fraud and False Statements 1001- 1040***

***U.S Coder Chapter 19 – Conspiracy 371 – 373***

***U.S Code Chapter 23 – Contract 431 – 443***

***U.S Code Chapter 31 – Embezzlement & Theft – 641 – 670***

***U.S Code Chapter 63 – Mail Fraud & Other Criminal Fraud – 1341 – 13511 U.S. Code Chapter 134 – Frauds and swindles – 1361 – 1369***

***Canadian Fraud Laws – Canadian Laws Dealing With Fraud***

- *lying*
- *by repeating something that is or ought to have been known by the fraudulent party as false or suspect or*
- *by concealing a fact from the other party which have saved that party from being cheated.*
- *deceitful conduct designed to manipulate another person to give something of value by:*
- *False or misleading representations*

*2. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or... any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect. (5)... liable to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or (b) on summary conviction, to a fine not exceeding \$1,2000.000.00 or imprisonment for a term not exceeding 25 years, or to both. ”*

22. This email is so offensive and so dangerous. It has been published to Mr. Qaisar who makes no claim in relation to this email. He is not a Claimant in regard to this particular allegation. Similarly, Ms. Saira Mohabir has not been proven to be any representative of the Fourth Defendant. She may have been a broker in the sale, but the sale had long been completed.
23. The email refers directly to the First, Second and Third Claimants as co-conspirators who defrauded or stole from the Defendant and then attempted to conceal their activities. These are all crimes punishable by imprisonment. There is no doubt in my mind whatsoever that the words are indeed defamatory.
24. What adds to the impact of this email is the way in which it has been written. The use of ‘legalese’ seems a genuine attempt to impute legitimacy to the contents. A reasonable right-thinking person would believe that the First, Second and Third Claimants are indeed involved in some nefarious activity for which they would be detained by police and eventually imprisoned.

25. What may ease the blow in some small measure is that all the recipients know the Defendant, were aware of the issues and may not be so easily taken in or persuaded by what he has written even though it was so convincingly written.

**The Slander:**

26. The First and Second Claimants allege slander where the Defendant spoke of them in the following terms in the presence of Mr. Juan Pop:

*“Mr. Nasir and Mr. Shabir stole two hundred and forty thousand dollars from me and now they are saying that I am a danger to guests out here on the resort.”*

27. Juan Pop gave no evidence before this Court so there is nothing to be considered. This claim fails.

**The Fourth Claimant:**

28. This party was not mentioned in any of the defamatory publications. In her submissions, Counsel for the Claimant did not address how a claim could possibly be made out by this Claimant and there would have been difficulty doing this since there was nothing whatsoever pleaded in relation to that Claimant.

29. The only mention is of suffering serious financial loss with respect to its business through reputational harm. It is beyond me why there was no application to strike out the Claim made by the Fourth Claimant.

**What reliefs are the Claimants entitled to:**

What Quantum of damages should be awarded to the Claimants:

30. In *King and Anor v Sulph Claim No 142/2018 at paragraph 30*, this Court set out the considerations in determining quantum of damages as “*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 the assessment.*”
31. In that case, the words published in a newspaper (2 separate posts) alleged exploitation of employees, paying salaries at rates below that allowed by law and refusal to contribute towards social security or pay for vacation leave. This Court awarded \$20,000.00 as general damages and \$10,000.00 as aggravated damages.

As comparables the Claimants provided:

32. *Rodolfo Ramos v Simeon Herrera Claim No. 289/2008* - on judgment in default for libelous words published in an email to the Claimant’s employer - \$5,000.00 general damages and \$2,000.00 aggravated damages were awarded.
33. *Sittee River Wildlife Reserve et al v Thomas Herskowitz and Anor Claim No. 131/2016* - libel on the Internet alleging deception, embezzlement, misappropriation, defrauding the government, and other illegal and unethical conduct - \$30,000 and \$60,000.00 respectively in general damages.
34. The Claimant submitted that general damages should range in this case somewhere between \$10,000.00 and \$60,000.00 per Claimant and aggravated damages between \$2,000.00 to \$10,000.00. The proposed figure for aggravated damages was increased to \$10,000.00 to \$30,000.00 in later submissions. This

figure, Counsel urged, was more in line with *Sittee River Wildlife Reserve et al (ibid)*.

35. The Defendant drew the above two cases to the Court's attention as well as two other cases: *Lois Young-Barrow v Andrew Steinhauer and Belize Times Press Ltd. No. 561/2006* and *Said Musa v Ann Marie and Anor No.305/2005*. Both being cases of libel published in a newspaper. The Court awarded \$30,000.00 and \$25,000.00 respectively.
36. Counsel asked the Court to consider that the defamatory words (if found so to be) had been published to only a handful of persons. He relied on Bingham MR's rationale in *John v MGM Ltd [1996] 3 WLR 593 at 607* that "a libel published to millions has a more significant potential to cause damage than a libel published to a handful of people." He proposed an award of no more than \$25,000.00.
37. The Court considers the age of the *Rudolph Ramos matter (2008)*. So, while it may be closest on point save that there was no trial, some increase must be allowed for the effluxion of time.
38. The First and Second Claimants were successful in relation to one publication. That publication had been sent to only two other persons besides the Claimants themselves. But it was so egregious in nature that the Court will award \$10,000.00 to each Claimant.
39. In relation to the Third Claimant, the Court considers that there were two defamatory publications. One was sent to a number of persons and the other

sent to two other persons in addition to those against whom the offensive statements were made. The Court awards \$20,000.00 in general damages.

**Whether aggravated damages should be awarded:**

40. The Court finds it imperative to award aggravated damages. The matter was discussed by the parties with the Defendant. Explanations supported by the requisite documentation was provided but he doubled down and repeated the libel.

41. Rather than offer an apology, he became increasingly agitated and confrontational. In fact, he has counterclaimed for misrepresentation in relation to how the “scam” allegedly occurred. That will be dealt with below but suffice it to say he has not met with success there either.

42. The matter was sent to mediation without success. This, to my mind, was a matter perfect for settlement. The Defendant battled to the very end. He cross-examined, the Claimants say, with hostility but the Court prefers vigor. However, his Defence really lacked conviction. Aggravated damages are awarded to the First and Second Claimant in the sum of \$5,000.00 and to the Third Claimant in the sum of \$10,000.00. The damages shall all attract interest.

**Whether an injunction is necessary:**

43. The Claimants are entitled to and shall all be granted an injunction restraining the Defendant from repeating the same or similar defamatory words.

**What cost order should be made:**

44. The First Claimant brought two claims against the Defendant: one in libel and the other in slander. He was successful on one and will have half his prescribed costs. The Second Claimant brought four claims: three in libel and one in slander. He saw success on one claim only. He shall have a quarter of his prescribed costs. The Third Claimant was successful on both claims which he brought so he is entitled to his entire prescribed costs.

### **The Counterclaim**

#### **Whether the representation identified by the Defendant was a fraudulent misrepresentation:**

45. The thrust of this allegation is that the Defendant had been informed by the First Claimant, then acting on behalf of the Fourth Claimant, that the stamp duty would be calculated at a rate of 5%. The stamp duty was in fact calculated at 8% pursuant to the newly amended legislation.
46. The Defendant says that he paid all that he was required to pay in accordance with the purchase agreement and before the amendment came into force. However, the stamp duty was only paid after the amendment causing the increase.
47. There is evidence showing that the application was made to the Central Bank of Belize (Central Bank) for permission for the transfer approval which had to be secured before the stamp duty could be paid. The timeline proven is as follows:
- a) The contract and an addendum were entered into on the 29<sup>th</sup> September 2017.
  - b) The application was sent to the Central Bank on the 11<sup>th</sup> October 2017.

- c) The money was paid over by Mr. Title on the 16<sup>th</sup> October 2017.
  - d) The Central Bank approval is dated the 18<sup>th</sup> December 2017.
  - e) The Amendment increasing the stamp duty took effect on 1<sup>st</sup> November 2017.
50. There could have been no misrepresentation, fraudulently or otherwise. The stamp duty which was originally stated was true at that time. The sellers had no power over the Government's decision to bring an amendment into force. The seller certainly had no duty whatsoever to bring the state of the law (an intended amendment) to the attention of the buyer.
51. The seller could not use the original percentage or withhold the possible increase as an incentive (as alleged by the Defendant) since they could not have known precisely when the amendment would come into force. There is no evidence that the eleven-day delay between signing and application would have altered the state of affairs as they have unfolded.
52. There is an email from Mr. Qaisar Mahdi dated 18<sup>th</sup> March 2018 which sought Ms. Mahabir's assistance in explaining the increase to Mr. Title. She does so quite clearly later that same day. She even reminds him that she sent him a copy of the amendment in November.
53. The stamp duty is mandatory and is calculated in accordance with the law. It goes into government coffers and has absolutely nothing to do with the seller. This claim must fail and issue 2 falls away.



**Whether the words complained of are defamatory and is the defence of justification available to the Claimants:**

53. This Claim concerns a Memorandum which was published by the Fourth Defendant and others who are no party to this cause. Mr. Tittle claims that it was not only sent to the addressees but to other persons such as Alfred M. Garfield. The Memorandum reads as follows:

*“LAS TERRAZAS (Belize) LIMITED  
San Pedro, Belize, CA*

*Date: November 04, 2019*

*To: The Members of the Proprietors of Strata Corporation No. [57]*

*From: Las Terrazas (Belize) Limited, Sands Management Ltd and Coral Management Limited*

*Re: Use and Enjoyment of Common Property*

*We would like to bring to the attention of the Las Terrazas community that Mr. David Tittle, the proprietor of unit no. 105, has not been adhering to the bylaws governing use and enjoyment of the common property. We have received reports from unit owners and staff that Mr. Tittle has on several occasions berated staff or yelled offensive and profane remarks at such staff and other guests on the common property or otherwise interfered with the daily operations of the resort by spreading false information. Furthermore, he has, on several occasions, been seen walking around the common property with a baseball bat or machete in hand in a manner intended to intimidate other persons on the common property.*

*Apart therefrom, we also received a report from Mr. Scott Proctor, another unit owner, that he was arrested by two police officers attached to the San Pedro Police Station on the 10<sup>th</sup> October, 2019 on the basis of an accusation by Mr. David Tittle that Mr. Proctor had sent a threatening email to Mr. Tittle. We have been informed that the said police officers did not review the email until after they had detained Mr. Proctor and transported him to the San Pedro Police Station and that upon such review they determined that the content of the said email was not threatening and released Mr. Proctor. It appears Mr. Proctor was unlawfully detained and/ or arrested, which constitutes false imprisonment. We have reported this incident to the Commissioner of Police in Belize City and the United States Embassy who are now conducting an investigation into the matter.*

*We wish to remind members that section 6 (e) of the bylaws restricts unit owners from engaging in any illegal, noxious or generally offensive activities on the common property. Furthermore, section 7 (d) imposes a duty on unit owners to only use and enjoy the common property in such a manner as not reasonably to interfere with the use and enjoyment thereof by other unit owners and their families or visitors.*

*Unit owners and their guests are expected to abide by the Bylaws and the laws of Belize. Conduct such as that described above is extremely offensive and deprives other proprietors and their visitors and guests of their right to use and enjoy the common property. These incidents will be brought forward to the Executive Committee for further review and action.*

*Should we receive further reports of continued breaches of the bylaws and conduct that violates the rights of other unit owners and their guests, we shall not hesitate to take legal action for injunctive relief and for any and all costs including legal costs incurred in connection with the same.*

*Finally, Las Terrazas (Belize) Limited has engaged legal counsel to initiate court proceedings against Mr. Title in relation to the false information, libel, and defamation about the resort, us personally, and other members of the Strata Corporation. We, therefore, ask that you be cautious about repeating any false information.*

*As always, we solicit input from the owners with respect to these matters. Please feel free to contact any of us at your convenience.*

*Sincerely,*

*On Behalf of Las Terrazas (Belize), Coral Management, and Sands Management*

*Shabir Walji”*

54. Mr. Title alleged that these words were understood to mean that he berated staff, yelled profane and offensive remarks at staff and guests on the common property; interfered with the daily operations of the resort by spreading false information; walked around with a baseball bat or machete to intimidate other persons and engaged in illegal or generally offensive activities on the common property.
55. He said this harmed his reputation and caused him to suffer hurt, distress, and embarrassment.
56. In defence, the Fourth Defendant admitted that it published the Memorandum and circulated it amongst members of PSP57 and that its words bore the meaning alleged. However, they plead justification as the contents are true.

57. The evidence as it unfolded came from Carolyn Lloyd, a general manager at Las Terrazas Resort and Residence (the Resort). She testified to numerous encounters with Mr. Title when he used offensive and obscene language. She said he had been verbally abusive to her, and she set this out in an email to Nasir Walji in early September 2018.
58. From video tape she accessed at the Resort, she shared footage of Mr. Title aggressively shouting at a man whom she identifies as Curl Bell. I found her to be a forthright witness.
59. Steven Calland, another general manager, also testified as to Mr. Title's offensive language and seeing him with what appeared to be a machete tucked in his pants. He also spoke of receiving reports involving Mr. Title with a baseball bat. The Court also found him to be an honest witness.
60. Mr. Title on the other hand was a man with an agenda. He felt he had been wronged and "screwed" out of a considerable sum of money. By his own admission, he believed those in authority at the Fourth Defendant were antagonistic and possibly intending to plot something evil against him and his partner.
61. I observed his demeanor in the witness box and his admission under cross-examination that he does in fact use obscene language, that he may have yelled something offensive to Mr. Calland (one time), and that he did walk around with a machete (a trinket made of paper, he explained). The video shows him

walking around with a baseball bat. There is no proof that he intended to intimidate rather than protect.

62. Certainly, the email which is the subject of issue 4 of the Claim contains false information about the Claimants. While I can not say the false information has been proven to interfere with the daily operations at the Resort, this, nor the lack of intent to intimidate with the bat or machete, is of such significance so as to defeat the defence of justification.
63. Gatley on Libel 10th ed assures at page 277 (11.10) that “... *if the Defendant can prove that the main charge, or gist, or the libel is true, a slight inaccuracy in one or more of its details will not prevent him from succeeding in a defence of justification.*”
64. The defence of justification has been made out and this claim fails accordingly. Issue 5 falls away.

#### **DISPOSITION:**

1. Judgment for the Third Claimant for defamatory words published in an email by the Defendant on the 2<sup>nd</sup> October 2019.
2. Judgment for the First, Second, and Third Claimants for defamatory words published in an email by the Defendant on the 4<sup>th</sup> October 2019.
3. General damages are awarded to the First and Second Claimant in the sum of \$10,000.00 each.
4. General damages are awarded to the Third Claimant in the sum of \$20,000.00.
5. Aggravated damages are awarded to the First and Second Claimants in the sum of \$5,000.00 each and to the Third Claimant in the sum of \$10,000.00.

6. Interest is awarded on the total amounts at the assessed rate of 6% per annum from the dates of publication to the date of judgment, and thereafter at the statutory rate of 6% per annum until payment in full.
7. The Defendant is restrained whether by himself, his employees, or agents or otherwise, from further publishing or causing to be published the same or similar words defamatory of the First, Second and Third Claimants.
8. Costs to the First Claimant being 50% of the prescribed costs, to the Second Claimant being 25% of the prescribed costs and to the Third Claimant being 100% of the prescribed costs. I depend on Counsel on both sides to calculate and agree this figure.
9. Judgment for the Fourth Claimant on the Counterclaim.
10. There will be no order as to costs since the Fourth Claimant was entirely unsuccessful on the Claim against the Defendant.

**SONYA YOUNG**  
**SUPREME COURT JUDGE**