

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

CLAIM NO. 132 OF 2020

BETWEEN

**(JOHN BRICENO, Leader of the
(Opposition**

CLAIMANT

**(
(AND**

**(
(MOSES MICHAEL LEVI BARROW
(A.k.a. SHYNE BARROW**

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

4th January 2023

Appearances:

Mr. Leeroy Banner, Counsel for the Claimant.

Mr. Rodwell Williams SC with Ms. Darinka Munoz, Counsel for Defendant.

JUDGMENT

1. This case concerns a claim for defamation made by the now Prime Minister of Belize against the now Leader of the Opposition and Member of Parliament. When the offending words were published, the Claimant was then the Leader of the Opposition, a Member of Parliament and an Area Representative for the

People's United Party (PUP). The Defendant was an aspirant for the United Democratic Party (UDP) and the then Prime Minister of Belize was his father.

2. The Defendant admits having published the following words on his Facebook page:

“The only Cabinet member ever arrested & convicted of landing planes is Elijio Briceno who is Johnny Briceno’s pa!

When Elijio Briceno was a Minister of George Price Cabinet, according to the DEA authorities, the Minister told the undercover agents he could provide them with a safe landing strip in Belize to pick up marijuana and transport it to the Washington area. ‘He promised them they could come in and out without interference from Belize authorities,’ Mr. Yout said.

If anybody is landing planes and trafficking drugs its Johnny Briceno!!! That’s why he & the pup want to form government, just like his father he will act with impunity to run his cartel!!!

Like father like son!!!”

3. The Claimant says that in their natural and ordinary meaning, the words would be understood to mean that he is landing planes, trafficking drugs, engaged in illegal matters, and is a member of a cartel. This would cause serious injury to his personal and professional reputation, his feelings and character, as well as considerable embarrassment; and even invite odium and contempt.
4. He seeks damages with interest for the defamation including aggravated damages for the Defendant’s malice, recklessness and refusal to apologise, and an injunction to restrain any repeat of the same or similar publication.
5. In his defence, the Defendant raised that the words could not bear the meaning attributed to them by the Claimant. They were fair comment on matters of public interest of the Claimant’s fitness to be elected Prime Minister, or alternatively, they were published on an occasion of qualified privilege. He

denied gross negligence or malice and the Claimant's entitlement to any remedy claimed.

6. He maintained that his sole motivation was to honestly express his opinion in an attempt to vindicate his own father's name. He wished only to refute untrue and irresponsible statements made by the Claimant about his father's complicity in the landing of drug planes.
7. The parties were referred to mediation without success but the Claimant admits that the Defendant has deleted the offending words and filed a Notice of Apology on 31st March 2021, which was served on his Counsel. The Defendant also alleges that he had personally and sincerely apologized to the Claimant on the 30th March 2021, apparently via text message.

THE ISSUES:

1. Whether the words as published are capable of bearing a defamatory meaning?
2. Whether the defence of qualified privilege is available?
 - a. Reply to an attack
 - b. Moral or social duty
3. Whether the defence of fair comment on a matter of public interest is available?
4. What, if any remedies, are the Claimant entitled to?

Whether the words as published are capable of bearing a defamatory meaning?

8. The Claimant asked the Court to "*first consider what meaning the words would convey to the ordinary person. Having determined that meaning, the test is whether under the*

circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense.” Halsbury’s Laws of England Vol. 28 paragraph 43.

9. Using this test, the Court ought to find that the pleaded case had been made out:
 - A. That the Claimant is landing planes and trafficking drugs;
 - B. That the Claimant is engaged in illegal matters; and
 - C. That the Claimant is a member of a cartel.

10. The Defendant stressed that the ordinary meaning of the words planes, drugs and cartel are not defamatory and the Court must not put a strained or unlikely construction on the words. Since the Claimant had not pleaded an *innuendo* meaning, they could not rely on facts solely or in addition to the ordinary meaning of the words used. Further, since the PUP is not a party to this claim, the Defendant ought not to be found liable for words concerning the PUP.

11. The Court considered the Article as a whole (*Charleston v News Group Newspaper Ltd [1995] 2 ALL ER 313*). There would have been no need for the Claimant to plead any *innuendo*. The Article was clear in its meaning and that is that the Claimant was illegally landing planes and trafficking drugs in Belize as part of a drug cartel of which he is a member.

Whether the defence of qualified privilege is available?

a. Reply to an attack:

12. The Defendant in his witness statement said he “*was shocked*” when he heard a recording of the Claimant’s New Year Address on Facebook where he said “*We have credible information which confirms that these illegal landings were being facilitated by corruption in the highest level of the UDP government.*” Although his father’s name

was not mentioned as Prime Minister of Belize, it was he who held the office at the highest level of the UDP Government.

13. The Defendant said he reached out to the then Attorney General who responded with a public demand for the Claimant to show proof of the allegation made. The Attorney General's Office informed him that they had received nothing from the Claimant but would not sue him. The Defendant then took matters into his own hands, merely intending to vindicate his father's name.
14. The Claimant vehemently denied that the offending post was a response to his speech on 1st January 2020 or was intended to vindicate the Defendant's father's name. Rather, the post was actuated by malice.
15. He highlighted that the post was made almost a week after his speech. It made no reference to the speech or indicated in any way that it was a response. It did not even make reference to the Defendant's father.
16. All this revealed that there was no evidence to support the Defendant's contention.

Court's Consideration:

17. Counsel for the Defendant relied on Gatley on Libel and Slander, 9th ed, *Sweet and Maxwell [1998] paragraph 14.49* for an explanation of this full defence:-

*"[A] person whose character or conduct has been attacked is entitled to answer such attack, and any defamatory statements he may make about the person who attacked him will be privileged, provided they are **published bona fide and are fairly relevant to the accusations made**. The law justifies a man in repelling a libellous charge by a denial or an explanation. He has a qualified privilege to answer the charge; and if he does so in good faith, and what he publishes is fairly an answer, and is published for the purpose of repelling the charge, and not with malice, it is privileged, though it be false. Mere retaliation which cannot be*

described as an answer or explanation, is not protected, but the defendant is not required to be diffident in protecting himself and is allowed considerable degree of latitude in this respect. Qualified privilege is not available if the defendant is responding to an attack which he knows to be justified."

18. Mr. Justice Bean (as he then was) explained this rare form of self-redress in ***Bento v The Chief Constable of Bedfordshire Police [2012] EWHC 1525 (QB)***:-

"[101]...it is recognised at common law that a person may publish, in good faith, false and defamatory statements about another in reply to an attack by that other, and as a defence to that attack.The rationale is that a person who has been attacked publicly has a legitimate right or interest in defending himself against it, and the [readers or viewers] of the original attack have a corresponding interest in knowing his response to it. The response has to be proportionate to the original attack in that it should not be made more widely than the attack or include irrelevant statements"

19. Starke J in ***Penton v Calwell [1945] HCA 51-70*** informed that:

"Great latitude must be allowed to a person defending himself, his interests and rights against attacks and accusations made against him, and, however violent or strong his language may be, still it is for the jury to determine whether he could not honestly and reasonably have believed to be necessary for the vindication of himself, his rights and interests: See Gray v Society for Prevention of Cruelty to Animals (1890) 17 Rettie 1185; Spill v Maule (1869) LR 4 Ex 232...The language in which defamatory accusations are repelled must not be scrutinized too critically, for the party vindicating his character has a privilege to publish matters of vindication and defence and matters not irrelevant for that purpose. And it is for the jury to determine whether or not the privilege of the occasion has been abused."

20. Where a public attack is made, the reply need not be in one's own defence but in defence of one's family, (as the Defendant alleges) or even property. The reply may be vigorous but the Court must be able to distinguish between a true reply and a separate attack. The Court must also consider whether the original attack was justified because if it is in fact true, this defence fails. The defence also fails if the reply is not proportionate or was actuated by malice.

Was it a True Reply or a Separate Attack?

21. The Court considers that there was only one week between when the Claimant made his speech and when the Defendant wrote his post. This is very significant.
22. The Court also considers the similarities in what had been uttered by the Claimant and what had been stated in the Defendant's post. The Claimant's speech attacked the highest levels of the UDP Government and purported to support it with allegations of confirmatory credible information.
23. The Court accepts that the Prime Minister was at that time part of the highest level of the UDP Government and that the Prime Minister was also the Defendant's father.
24. The Defendant's post attacked not only the Claimant's father by name, but also his party. It maintained the same general line of attack - drugs, drug planes landing, and a concerted group or party effort to facilitate this illegal enterprise. The post is so closely related to the original statement that it is nothing short of a rebuttal.
25. To my mind, this is overwhelming evidence that it was in fact a reply to the Claimant's original attack and the Court so finds. There was no need to state specifically that it was a reply to a particular statement made nor was there a need to call the Defendant's father by name to evidence a reply.
26. The Court also finds that the Defendant's response was proportionate. He used the same Facebook medium by which he gained access to the Claimant's recorded speech. He made it no more or no less public. He targeted the very

same Facebook audience, demonstrating a community of interest. He explained why he had reached the conclusion he had and was willing to make the statement about the Claimant which he made.

27. Furthermore, there was no evidence provided from the Claimant that the statement which he had made in his New Year Address was in fact true. What was presented by the Defendant and was never contradicted by the Claimant is that the Attorney General publicly demanded supporting proof for his statement but none had been forthcoming.
28. In these circumstances, it is impossible for this Court to make a finding that the original attack was in fact true. Nonetheless, it was a serious attack and was certainly intended to prejudice the UDP Government, and the higher levels of the UDP Government particularly. This would definitely justify a reply and the Defendant's reply appeared reasonably appropriate and relevant to vindicate his father's reputation.
29. It seemed fair that the reply would seek to undermine the attacker's credibility and impugn the truth of his statement. The Claimant urged that this defence should fail because the publication was actuated by malice (*Horrocks v Lowe* [1975] AC 135 at 149 as per Lord Diplock).

Was the Claimant actuated by Malice?

30. The Claimant points to the fact that the Defendant was able to research whether the Claimant's father had once been arrested but he made no effort to find out whether what he was stating about the Claimant was in fact also true.

31. Lord Diplock in *Horrocks (ibid)* determined at page 150 that:

“... the law must take [persons making statements upon privileged occasions] as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be ‘honest’, this is, a positive belief that the conclusions they have reached are true. The law demands no more.”

32. The Defendant said that having considered all that he had learnt of the Defendant’s father, he formed the honest belief that the Claimant would be the person involved in landing drug planes if any drug planes were being landed. He was steadfast and unshaken under cross-examination. The Court could find no reason to doubt that his belief was anything other than honestly held. The law demands nothing more.

33. However, even if a Defendant holds an honest belief, expressed malice could still properly be found. This goes to a finding of spite or a dominant improper motive. Lord Diplock in *Horrocks (ibid)* continued at pages 150-151:

“Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity.... It is only where this desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that ‘express malice’ can be properly found.”

Improper Purpose:

34. In an attempt to show improper purpose, the Claimant then drew the Court’s attention to other posts which the Defendant had made. The first was made in July of 2019 which stated that the Claimant and his family owned several thousand acres of land. The Claimant said this imputed that he was a corrupt

Politician. I find it difficult to make the quantum leap required to draw the imputation impressed. It is certainly not evidence of the level required to prove malice.

35. The next post, of 14th August 2019, is without any context. It states, “*Nobody more corrupt than Johnny Briceno!*” While it does make a definitive statement, it is doubtful that any reasonable person would have been swayed by its baseless arbitrariness. Politicians are to expect some level of criticism generally.
36. The Claimant then pointed to two other posts by the Defendant which were made after the post in issue in this Claim. The first being in February 2020, where the Defendant stated that Elijio Briceno “*is the only minister of Government to ever be convicted of drug trafficking while a member of the George Price cabinet.*” He then reminded the audience of the Claimants relation to Elijio Briceno and concluded that “*A vote for the PUP is a vote for a criminal organization! A cabinet cartel.*”
37. The other was on the 29th January 2021, where he writes “*well, well Prime Minister Briceno, the UDP is no longer in Government and since your PUP Government took office in November 11, 2020 the drug planes are still landing with impunity so must it be officials in the highest level of your PUP Government facilitating the illegal landings?*”
38. These statements came after and they are all made along the same tone and tenor of the offending post. Rather than demonstrate some dominant improper motive or spite, they seem still to be dealing with what had been raised initially by the Claimant - a party’s (highest level) involvement in drug trafficking.

39. I have twisted and turned this evidence; looked at it in every light but can not find that the Defendant was actuated by malice. There is no evidence that the Defendant had ever, before the Claimant's statement was made, attempted to raise in such a forum or any forum any information about the Defendant's father's arrest or conviction, the Defendant's father, or the Defendant's involvement in drug trafficking or landing of drug planes. He did make certain statements regarding the Claimant and his family but he never touched that topic.
40. This Court can not find that he made that statement for some dominant improper purpose.
41. What fully convinced me was the way in which he ended the offending post - *"like father like son!!!"* This seemed a clear indication that the Defendant intended to attack both father and son in equal measure to vindicate the perceived wrong which had been done to his own father.
42. For these reasons, I find that the defence of qualified privilege has been made out and has not been defeated. There is no need to discuss the other stated issues.
43. The Claim is dismissed with costs to the Defendant in the sum of \$7,000.00 as agreed.

SONYA YOUNG
HIGH COURT JUDGE