

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 660 of 2021

BETWEEN:

GLEN BRAYSHAW

Claimant

and

THOMAS JACKSON

Defendant

Appearances:

John Nembhard for the Claimant

No appearance for the Defendant

2023: March 28
November 13
2024: January 2

DECISION

[1] **FARNESE, J.:** Mr. Brayshaw alleges he was defamed by Mr. Jackson through Facebook posts. Trial between the parties began on 28th March 2023, when Mr. Jackson moved to strike out portions of Mr. Brayshaw's witness statement that relied on documents that were exhibited to the affidavit that was filed with the Claim Form but were not exhibited to the witness statement or included on the list

of documents shared during standard disclosure. Mr. Brayshaw asked to amplify his witness statement and introduce these documents. When Mr. Jackson objected, I adjourned the trial to allow the parties to provide written submissions on this point. I granted Mr. Jackson permission to amplify his witness statement and introduce the documents in a written decision released on 20th April 2023.

- [2] The court proposed dates to continue with trial but vacated those dates when confirmation of Mr. Jackson's availability was not forthcoming. Eventually, the parties agreed to proceed on the 13th November 2023 and a short hearing on the eve of trial was scheduled to address any last minute issues. Mr. Jackson's counsel appeared at that hearing and requested to be removed as counsel citing disagreement with his client arising from non-payment of his fees and the instructions counsel was receiving from Mr. Jackson on how the matter ought to proceed. I granted counsel's application after confirming that Mr. Jackson had notice of the trial date.
- [3] Mr. Jackson did not appear at trial and did not communicate with the court that he needed to find another attorney. I decided to allow the trial to proceed given the delay already occasioned in this matter. Mr. Brayshaw's witness statement was entered into evidence on the first day of trial. His witness statement was amplified when trial continued to introduce the documents addressed by my previous decision. He called no further witnesses. Consequently, the only evidence before this court is Mr. Brayshaw's witness statement and attached exhibits. I reserved my decision to review the claim as rule 15.3(c)(iii) of the Supreme Court (Civil Procedure) Rules does not permit the court to issue summary judgment in proceedings for defamation.
- [4] For the reasons outlined below, I find that Mr. Jackson published defamatory statements about Mr. Brayshaw. Mr. Brayshaw is awarded BZ\$10,000 for general damages, BZ\$10,000 for aggravated damages, and BZ\$1,440,000 for special damages.

Analysis

- [5] Even though no evidence was presented on Mr. Jackson's behalf and Mr. Brayshaw's evidence is uncontested, Mr. Brayshaw still has the burden to prove that he was defamed by Mr. Jackson. He alleges that Mr. Jackson posted the following to Mr. Jackson and Placencia Rentals' Facebook pages:

BELIZE BEWARE!!!!!!

This guy is on the run from US and Canadian authorities in Belize. He is a con man that has ripped-off MILLIONS of dollars in US, Canada and most recently Belize (Resere/Sanctuary/Kanatik/Maya Beach) DO NOT BELIEVE A WORD HE SAYS!!!

He is also suspected of child sex trafficking!

If seen contact jcohen@FTC.gov.

To be clear he is "SUSPECTED" of being involved in child sex trafficking. To my knowledge he has not been charged yet.

Mr. Brayshaw alleges this post was republished on the Placencia Daily and BuyBelize Facebook pages among others. He states all the statements are false. Consequently, his character and his personal and professional reputation have been gravely damaged and he has suffered considerable distress, hurt feelings, and embarrassment.

- [6] Mr. Brayshaw also argues the defamatory statements specifically targeted his primary economic activity. The statements were deliberately published on Facebook to reach the persons Mr. Brayshaw was currently or likely to do business with to diminish his prospects as a successful real estate developer. Mr. Brayshaw claims special damages of BZ\$1,440,000 for a contract he alleges to have lost because of these posts.
- [7] Mr. Brayshaw claims the statements are malicious because they were published with Mr. Jackson's full knowledge or reasonable belief that they were untrue. He alleges that the publication was in retaliation for Mr. Brayshaw's demand that Mr. Jackson return money owed in an ongoing dispute over a lease between the two

parties. Mr. Brayshaw asks the court to award general and aggravated damages for libel and injunctive relief to prevent further defamation.

[8] In his defence, Mr. Jackson disputes that his Facebook pages are public and that he published the defamatory statements. He further denies that Mr. Brayshaw is involved in the real estate industry and, therefore, Mr. Jackson disputes that Mr. Brayshaw suffered the special damages he claims. Although Mr. Jackson denies that he made the statements and disputes the damages alleged to have been suffered, Mr. Jackson did not present any of the usual defences to defamation such truth, opinion, or consent.

Issues

[9] This claim raises three issues:

- a) Are the statements defamatory?
- b) Did Mr. Jackson publish the statements?
- c) Is Mr. Brayshaw entitled to damages?

Analysis

[10] In her recent decision **Henry Jr. v The Auditor General & Anor.** Chabot J outlines what Mr. Brayshaw must prove to succeed in a claim for defamation.¹ The claimant has the burden to prove that the statement is defamatory and that it was made by the defendant. The court decides if a statement is defamatory by assessing whether the ordinary meaning of the words can bear a defamatory meaning. If the claimant proves that the defendant made a defamatory statement, the burden shifts to the defendant to establish if any defences are available. In this case, no evidence was led in support of an available defence. Therefore, if Mr. Brayshaw proves, on a balance of probabilities, that Mr. Jackson made

¹ Claim No. 363 of 2021 [Henry].

statements that are defamatory, the court will consider whether Mr. Brayshaw is entitled to damages without considering the question of defences.

Are the statements defamatory?

[11] As outlined in Henry:²

A statement is defamatory “if it would tend to lower [the claimant] in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally”. A statement is also defamatory if it discredits a person in his trade, profession or calling.

(footnotes excluded)

The test for whether words are defamatory is objective and does not require proof of Mr. Brayshaw’s being held in less esteem.³

[12] I agree with Mr. Brayshaw that the words in the Facebook posts are defamatory. When given their ordinary meaning, the words used in the posts are understood to mean:

- a) Mr. Brayshaw is a fugitive who was evading attempts by lawful authorities to arrest him;
- b) Mr. Brayshaw was or is involved in criminal or otherwise unlawful fraudulent activities;
- c) Mr. Brayshaw has defrauded persons of considerable sums of money;
- d) Mr. Brayshaw is a con man;
- e) Mr. Brayshaw is dishonest, untrustworthy, and unrestrained by the values and ethics which attend legitimate business relationships;
- f) Mr. Brayshaw is being investigated for child sex trafficking;
- g) Mr. Brayshaw is involved in child sex trafficking.

The post clearly states Mr. Brayshaw has engaged in and continues to be suspected of illegal and morally reprehensible conduct. When considered objectively, any person subject to these allegations is likely to be adversely affected.

² Henry at para 25.

³ Henry at para 27.

[13] I find the weight of evidence supports Mr. Brayshaw's claim that the statements published on Facebook were defamatory.

Did Mr. Jackson publish the statements?

[14] I find that Mr. Brayshaw has proven, on a balance of probabilities, that Mr. Jackson published the defamatory statements. A copy of the Facebook posts from a profile for "Jackson Thomas" was submitted into evidence. Mr. Jackson does not explicitly deny that the Facebook profile for "Jackson Thomas" is his and he admits that he has a personal Facebook account in his defense. He also does not expressly deny that he uses the Placencia Rentals Facebook page.

[15] In his witness statement, Mr. Brayshaw explains that he leased a property from Mr. Jackson. I find it credible, in the absence of any evidence to the contrary, that Mr. Brayshaw would be familiar with the Facebook pages Mr. Jackson uses given their pre-existing relationship.

Is Mr. Brayshaw entitled to damages?

[16] Defamation in the form of libel, as is alleged in this case, is actionable without proof of damage because "it is presumed that publication in and of itself has resulted in damage to the reputation of the person defamed."⁴ While Mr. Brayshaw asks for general and aggravated damages, he has not asked that the court award a specific amount, but provides the court with 4 Belizean cases as applicable precedents for damages awarded for defamation. Mr. Brayshaw asks for BZ\$1,440,400 in special damages for the loss of a contract because of the libelous statements.

[17] In **Anderson**, the claimant was awarded a nominal sum of \$5,000 in general damages after emails, initially sent to members of a government committee, were widely shared, and subsequently reported in the press. The emails alleged that the claimant was unprofessional, insubordinate, and negligent in the performance

⁴ Anderson v CEO of Health et al., Claim No. 484 of 2014 [Anderson] at para 30.

of her employment duties because of her refusal to sign the required customs declarations to import essential medications into Belize.

[18] In reaching its decision, the court in **Anderson** endorsed several factors identified in **Ramsahoye v Lall & Anor.**⁵ as relevant to calculating general damage awards for defamation. These factors are:⁶

- (i) the nature and gravity of the defamatory imputations;
- (ii) the objective of the defamatory publications;
- (iii) the conduct of the defendants;
- (iv) the manner in which the trial was conducted by the defendants;
- (v) the distress and anguish caused by the defamatory publications;
- (vi) the aggravation attending the scale of the injury caused to the victim of the imputations;
- (vii) the calculation and deliberation preceding the defamatory publications;
- (viii) the use of the media as a weapon of character destruction and professional degradation;
- (ix) the need for compensation for libel to be an effective as well as a necessary deterrent;
- (x) awards in other defamation cases, including awards in countries of the Commonwealth Caribbean; and
- (xi) the effect upon an award of an obvious intention on the part of the defendants to frustrate the victim of the imputations by speculative and embarrassing allegations which they did not intend to prove.

The court held that the nature and gravity of the defamatory statements were minor and because the publication was never intended to be public, the objective of the publication could not have been calculated to embarrass the claimant.

[19] In **Barrow v Rudon & Anor.**, the claimant was awarded general damages of BZ\$40,000 and aggravated damages of BZ\$10,000 after a default judgment.⁷ In this case, the defamatory statements asserted that the claimant exerted control over the Ministry of Natural Resources for his own personal benefit and orchestrated the release of confidential documents to discredit an opponent. The

⁵ (2015) 85 WIR 99.

⁶ Anderson at para 30.

⁷ Claim No. 254 of 2018.

court held that the defamatory statements had serious personal and professional effect on the claimant because they struck “at the heart” of his reputation. The court noted that the claimant worked in the financial sector where integrity and honesty are essential. The court further found that the damages were exacerbated because the statements alleged that the corruption was of such a scale that it involved government officials.⁸ The court also found that the reach and effect of the statements was greater because the statements were published online.⁹ Finally, the facts there was no apology made and the statements remained online at the time of trial were found to be aggravating factors.¹⁰

[20] In **Bevans v Briceno et al.**, the claimant was awarded BZ\$60,000 in general damages and \$40,000 in aggravated damages after the Prime Minister gave a media interview where he stated that the claimant fired her employees and gave herself a substantial raise.¹¹ In reaching its decision, the court outlined the purposes of damages for defamation are:¹²

(1) to compensate for the distress and hurt feelings; (2) to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and (3). to serve as an outward and visible sign of vindication.

The court went on to consider:¹³

- (1) the conduct of the claimant, her position and standing;
- (2) the nature of the libel;
- (3) the mode and extent of publication;
- (4) the absence or refusal of any retraction or apology;
- (5) the conduct of the defendant from the time when the libel was published down to the verdict; and
- (6) The impact upon the claimant’s feelings, reputation and career.

⁸ Barrow at para 18.

⁹ Barrow at para 19.

¹⁰ Barrow at para 22.

¹¹ Claim No. 771 of 2020 {Bevans}.

¹² Bevans at para 90.

¹³ Bevans at para 91.

The court noted that there was no evidence to refute the claimant's assertion that she enjoyed good standing in the community because of her character and unblemished professional record.¹⁴ There was also no evidence to suggest that she provoked the defamatory statements.¹⁵ The fact that the statements were widely broadcasted without subsequent retraction and no apology was given were factored into the damage award.¹⁶ Finally, the court held that an award of damages to repair and vindicate the claimants' reputation was necessary because social media posts submitted into evidence proved that the claimant's reputation was harmed.¹⁷

[21] In **Mena v Mejia**, the court awarded damages of BZ\$60,000 for general damages and BZ\$20,000 for aggravated damages for statements made in the media that the claimant was a fraudster and corrupt, had swindled persons out of their multimillion dollar company, and had demitted office to obtain prime national land.¹⁸ The court noted that the claimant was a well-known business person, former educator, and politician and stated that actual injury to reputation can be inferred in the circumstances. That the defendant refused to apologize was seen as an aggravating factor.

[22] After reviewing the cases provided by Mr. Brayshaw, I find an award of general damages of \$10,000 is warranted in the circumstances. While I have no doubt that Mr. Brayshaw suffered distress and hurt feelings given the nature of defamatory statements, I am not convinced that the defamatory statements have or will cause lasting reputational harm. The circumstances of Mr. Brayshaw's case can be distinguished from the authorities in several important ways.

[23] Although posted to social media and shared to other social media sites within Belize, Mr. Brayshaw has not provided me with any evidence that these posts have been widely viewed. He states in his witness statement that he and "several

¹⁴ Bevens at para 92.

¹⁵ Bevens at para 94.

¹⁶ Bevens at paras 96 and 98.

¹⁷ Bevens at para 103.

¹⁸ Claim No. 323 of 2021.

other persons who were at the time also in Belize” saw the posts. The court was given no basis to assess his meaning of “several” persons. Comments and reactions to the posts were not submitted into evidence. I also have no evidence to suggest how long this post remained prominently positioned in the feeds of the social media pages where it was posted. Unlike other cases, the post was not widely reported in the Belizean media thereby extending its reach.

[24] Mr. Brayshaw is also not an ordinary resident of Belize. He has not proven that he has a sufficiently public profile that would cause anyone who does not already know him to subsequently recall this social media post. The statements were also not made by a public office holder or someone whose profile or reputation would add credibility to the statements.

[25] I also find that an award \$10,000 for aggravated damages is justified. The nature of the allegation of child trafficking was calculated to injure. I also find the allegation that Mr. Brayshaw is a con man was a deliberate attempt to interfere with his professional reputation and to damage his business. The inclusion of Mr. Brayshaw’s photo is also evidence that Mr. Jackson wanted to leave no doubt in the minds of the readers of that post that Mr. Brayshaw was its subject. I do not find, however, the lack of an apology or retraction an aggravating factor because Mr. Jackson does not admit making the statements unlike previous cases. An apology or retraction would have undermined his defense.

[26] I also find that special damages in the amount of US\$720,000 are proven. Mr. Brayshaw has provided an email confirming that a ‘morality’ clause in a commercial contract was invoked to terminate a contract with Mr. Brayshaw as a direct result of the allegations made in the Facebook posts. Mr. Brayshaw was to receive US\$240,000 per year for 3 years for his services under that contract.

Disposition

[27] IT IS HEREBY ORDERED THAT:

- a) There be judgment for Mr. Brayshaw;
- b) Mr. Jackson pay Mr. Brayshaw general damages for defamation in the sum of BZ\$10,000, aggravated damages in the sum of BZ\$10,000 and special damages in the sum of BZ\$1,440,000 with interest at the rate of 6% to accrue from the date of judgment;
- c) A permanent injunction is granted restraining Mr. Jackson, whether by himself, his servants, or his agents from further publishing or causing to be published the said or similar words defaming Mr. Brayshaw; and,
- d) Costs are awarded to Mr. Brayshaw on a prescribed basis based on the judgment award.

**Patricia Farnese
High Court Judge**