

IN THE SUPREME COURT OF BELIZE, A.D. 2016

CLAIM NO. 131 OF 2016

BETWEEN

**SITTEE RIVER WILDLIFE RESERVE
ECO FUTURES BELIZE LIMITED
GLOBAL PROPERTY ALLIANCE, INC.**

**FIRST CLAIMANT
SECOND CLAIMANT
THIRD CLAIMANT**

AND

**THOMAS HERSKOWITZ
INDEPENDENT OWNERS OF SANCTUARY
BELIZE**

**FIRST DEFENDANT

SECOND DEFENDANT**

Keywords: Defamation: Meaning; Natural & Ordinary meaning; Literal and Inferential Meaning; Strained and Unlikely Construction; Imputation Conveyed; Context of words;

Libel: Internet; Publication; Internet publication; Jurisdiction;

Defences: Truth & Justification; Absolute Privilege; Fair Comment; Specific Misconduct; Conduct Rule;

Practice & Procedure: Pleading; Publication and Clarity of Pleading;

Damages: Aggravated Damages;

Before the Honourable Mr. Justice Courtney A. Abel

Hearing Dates: 21st July 2016
22nd December 2016
21st February 2017
22nd February 2017
1st March 2017
2nd March 2017
23rd March 2017
30th March 2017.

Appearances:

Mr. Rodwell Williams, SC, and Ms. Lissette Staine for the Claimants.

Mr. Michael Young, SC, and Mr. Yohhahnseh A. Cave and Ms. Stacy K Grinage for the Defendants.

WRITTEN JUDGMENT
Delivered Orally on the 30th day of March 2017

Introduction

- [1] This is a claim for libel, on the internet, relating to a project known as “Sanctuary Belize”; which the Claimants own, develop, manage and market.
- [2] The Claimants are alleging that the Defendants falsely and maliciously, wrote and published on a website and/or Facebook, defamatory words about them; as a result of which, they suffered loss and damage to their reputation, as well as to their trade and business of real estate development, promotion, marketing and sale of lands at Sanctuary Belize.
- [3] This bitterly disputed claim involves allegations by the Claimants that the 1st and 2nd Defendants, being respectively, (a): an unhappy owner of a lot within Sanctuary Belize; and (b): a group established to treat with, even challenge, an existing ‘Sanctuary Belize Property Owners Association’, (and in the process even aid a possible management takeover of the project), spitefully published on the internet (on webpages and on Facebook) untrue and derogatory words which were intended to disparage and injure the reputation of the Claimants.
- [4] The publications by the Defendants was initially, largely disputed. It is also generally denied that the Claimants are entitled to the remedies which they seek (damages on the footing of aggravated damages, or exemplary damages for libel, interest, an injunction and costs). The Defendants are advocating that the Claimants are not entitled to the reputation which they seek to defend.
- [5] The Defendants’ defence is that, in any event, the contents of any such publications were; (a): in substance and in fact, true; (b): were otherwise opinions of fair comment on a matter of public interest; and/or (c): privileged and (d): not made maliciously, but were published in a private group, open only to Sanctuary Belize and its sister project’s, Kanantik lot owners; and not to the general public.
- [6] The central point of the present claim appears to concern the motivations of the Defendants, in making the alleged publications: whether the contents of these publications, or any of them, were done out of malevolence, or were made falsely,

spitefully or maliciously. This will largely turn on the credibility of the witnesses for the Claimants and Defendants.

The Court Proceedings

[7] The Claimants allege in the Claim Form filed herein on the 3rd March 2016, that, they were carrying on a trade and business of real estate development, promotion, marketing and sale of land in “Sanctuary Belize”. That while they were doing so, they were libeled (on a website and a Facebook page) by the Defendants; and are therefore entitled, to damages (both aggravated and exemplary): for malicious publishing on the internet, certain defamatory and false statements of and concerning the Claimants. These alleged statements may be grouped under the following headings:

- (a) Statements contained in a letter dated August 13th, 2015, to Mr. Reynaldo Magana, President of the Institute of Chartered Accountants of Belize (“ICAB”) , and that the Defendants published the said letter to the general public on the Defendants website at:
[“http://independentownerssanctuarybelize.com”](http://independentownerssanctuarybelize.com)
- (b) Statements concerning the Claimants association with a mysterious and notorious criminal, implicating the Claimants in dubious or even illegal transactions and generally casting suspicion over them and their business dealings, which was published on the Defendants’ website at:
[“http://independentownerssanctuarybelize.com](http://independentownerssanctuarybelize.com)
- (c) The first Defendant (“TH”) published statements during the period of about 2015 to February 2016, on the Worldwide Web via his Facebook Page: <http://www.facebook.com/groups/sanctuarybelize/HOA>

[8] The Defendants admit that the 1st Defendant wrote the letter dated August 13th, 2015 to Mr. Reynaldo Magana, President of ICAB; and that the Defendants published the said letter to the general public on the Defendants’ website.

[9] However; the Defendants have challenged most of the factual and legal contentions of the Claimants and have specifically defended the claim, on the basis that:

- (a) The Defendants maintain that the words in the letter dated August 13th,

2015; were, insofar as they were factual, on the basis of an audit that had been released to the home owners by TH, by which the letter merely identified the inadequacy of the audited statements and asked ICAB to investigate whether the Accounting Firm, PKF Belize, had properly discharged its duty as a licensed Chartered Accountant.

- (b) The Defendants deny that the words complained of were false and were written with malicious intent; and dispute, that the words bore the meaning alleged by the Claimants.
- (c) Insofar as the words in the letter dated August 13th, 2015 consisted of statements of facts, the Defendants maintain that they are true in substance and in fact; and insofar as they consist of expressions of opinion, they are fair and bona fide comment upon the said facts, which are a matter of public interest.
- (d) The First Defendant denies that he ever published, or caused to be published to the general public, any of the words complained of; commencing in or about the year 2015, and up to and including February 2016, to the general public on their website at:
[“http://independentownerssanctuarybelize.com”](http://independentownerssanctuarybelize.com).
- (e) In relation to the alleged publications on the Defendants’ said website in or about the year 2015 and up to and including February 2016, the Defendants deny that the words complained of are defamatory of the Claimants; but maintain that such words complained of, were true in substance and in fact; and insofar as they consist of opinion, they are fair comment on a matter of public interest; and the Defendants maintain that the same were privileged, in that they were statements in pleadings published for use in judicial proceedings.
- (f) In relation to the alleged publications during the period of about 2015 to February 2016, on the Worldwide Web via Facebook Page <http://www.facebook.com/groups/sanctuarybelize/HOA> about the Claimants and their said businesses, the 1st Defendant denies that he

published to the general public the words complained of¹; he also maintains that such published words were true in substance and in fact, and insofar as they consist of opinion, they are fair comment on a matter of public interest. The First Defendant avers that the referenced Facebook page is a private and therefore, a closed group, open only to Sanctuary Belize and its sister project, Kanantik lot owners; and not the general public.

- (g) In addition TH disputes that the offending words bear the meanings ascribed to them by the Claimants and that the same were defamatory of the Claimants; or were or were capable of being understood or to bear, any meaning defamatory of the Claimants.
- (h) Further the 1st Defendant denies that the last referred to offending words were motivated by any of the alleged motivations.
- (i) The Defendants deny that the Claimants have suffered any loss.

[10] Directions were given by this Court on the 3rd May 2016; and the case was referred to mediation, but otherwise fixed for hearing on the 21st July 2016. As it happened, mediation did not take place and the trial was aborted at the request of the parties. A later trial date in December was then fixed by the Court, but was vacated by reason of the tragic death of leading Counsel for the Defendants.

[11] The Claimants, at the effective dates of trial in February of 2017, in support of their case; called the following witnesses to testify: (1) Mr. Jose Bautista, Chartered Accountant; (2) Mr. Rod Kazazi, the Chief Operating Officer of GPA until the end of 2016; (3) Mr. John Usher, the Chairman of the Board of Directors of SRWR since in or about 2006 until October 2016; and (4) Mr. Alfonso Bailey.

[12] The Defendants, in defence of the claim against them, called the following witnesses: (1) Mr. Douglas B. Stoesser, a member of the Board of the 2nd Defendant until August 2016 and its webmaster; (2) TH, who is also a Director of the Second Defendant and its Chairman.

[13] The Court had the benefit of substantial written and oral submissions from Counsel for the parties, for which this Court is extremely grateful.

¹ In paragraph 18 of the Statement of Claim.

The Issues

[14] The dispute became a little narrower as the case progressed before this Court, as a number of issues, which originally were raised, have been disposed of summarily by this court as set out below in the background facts, or were no longer contested.

[15] The issues that will substantively remain are the following:

- (a) Whether the offending words complained of bore the meanings alleged and whether those meanings were in their natural and ordinary meaning, defamatory of the Claimants.
- (b) Whether any of the offending and defamatory words were justified and/or true and/or false.
- (c) Whether any of the offending and defamatory words are malicious.
- (d) Whether any of the offending and defamatory words are protected by the defences of absolute privilege and/or fair comment.
- (e) The extent to which any of the offending or defamatory words resulted in loss and damage to the Claimants' trade and business.

The Law

Defamation Generally

[16] A Defendant may generally be found to have committed the tort of defamation whenever the Defendant publishes to a third person, words containing an untrue imputation, against the reputation of the claimant.

[17] Where the publication is made in a permanent form, such as on the internet, it is libel; if it is in some transient form, it is slander. Another critical distinction between the two ways of defaming a person is that libel is actionable per se – and the law will presume that some damage will flow from it and, unlike slander, where, for the publication to be actionable, some special damage must generally be proved to flow from it (unless it falls within certain specified categories).²

[18] In relation to both libel and slander, however, a defamatory statement must necessarily be proved.

² Gately on Libel and Slander, 10th Edn. Pg. 7, para. 1.3

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

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

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

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

The meaning of words for the purpose of the law of defamation is not a question of legal construction, since laymen will read into words an implication more freely than a lawyer. The meaning is that which the words would convey to ordinary persons. The ordinary person reads between the lines in light of his general knowledge and experience of worldly affairs...³”

[20] Where there is disagreement as to the reasonable meaning of the alleged defamatory statement, the standard which is used to resolve the dispute is *“what meaning or meanings may reasonably be drawn from the words themselves in light of the*

³ *Halsbury’s Laws of England*, Vol 28, Butterworths, London (1978) paragraphs 42, 43 and 44.

ordinary man's knowledge" the meaning of which the Claimant must specifically plead and allege the words to have.⁴

- [21] It is generally accepted that the court must not put a strained or unlikely construction upon the words. If the words are capable of bearing a number of good interpretations, it is unreasonable to seize upon only the bad one to give the words a defamatory sense⁵.
- [22] It is conceded by the Defendants that the Court must first determine what the 'imputation' is that was conveyed by the statement complained of before it can determine what it is that the Defendants must prove to be true in order to succeed (having regard to the context in which the statement complained of appeared)⁶.

Publication and Pleadings

- [23] In a civil claim for libel, in addition to proving that the words used were defamatory, the Claimant, in making a claim, is required to allege and prove publication of the words⁷.
- [24] Given the peculiar nature of the internet and the Worldwide Web, in relation to websites generally and Facebook, both were developed since the general development of the tort of defamation and specifically libel, and therefore special questions may arise about publication. There can be no doubt that making statements on either or both media would constitute publication by simply extending the general principles as it relates to publication in relation to preexisting media.
- [25] On general and well established principle, internet publication occurs at the place where the words are read by the publishee (the person on the receiving end of the published statement)⁸.
- [26] In certain cases, which this court considers does not arise in the present case, issues of jurisdiction may arise given the potentially global reach of the internet. Such

⁴ Gatley on Libel and Slander, 9th Edition, Sweet & Maxwell [1998], paragraph 26.20.

⁵ Halsbury Laws of England, 4th Edn. Vol 28, pg. 24, para. 46. Gatley on Libel and Slander 10th Edn. pg. 1024, para. 34.3. to 34.5. See *Morris v. Saunders* 1954 1 All ER 47.

⁶ See paragraph 47 of the Legal Submissions on Behalf of the Defendants.

⁷ Halsbury Laws of England, 4th Edn. Vol 28, para. 60.

⁸ Halsbury Laws of England, 4th Edn. Vol 28, para. 66.

issues, raised by the Defendants, do not arise because the Claimants in the present case have not specifically sued in relation to publication outside of Belize; and nor may such a claim be inferred from the pleadings.⁹

[27] Although the Claimants have pleaded that “*the World Wide Web had millions of users all of whom had free and open access to the words complained*” and “*it can be inferred that a large but unquantified number of users read the said offending words*” the Defendants have not specifically claimed for damages by reason of the publication outside of Belize.

[28] Thus in relation to the pleaded allegations in the present case, involving internet publication, this court will only consider the claim brought by the Claimants from the point of view that the alleged tort of libel is committed in Belize where and insofar as the publication is received by the reader or viewer, in Belize.

[29] In all cases, including the present case, malice at the time of publication of the words complained of must be proved and that it actuated such publication. But the Claimants may prove malice by inference, and by reference, to acts and conduct of the defendant both before and after publication, and may even prove malice by the conduct of the Defendant in the course of litigation and at trial.¹⁰”

Defences

[30] On the same point of pleadings in a case for defamation, the Defendant is required, in their Defence, to deny each and every allegation in the Claim.

[31] It is settled law that the defendant must not plead a general denial of the allegations in the claim, but must take each allegation separately, and either admit it, or deny it, or say that he does not admit it. The defendants must plead its case with sufficient precision and clarity so as to enable the Claimants to know what they will be obliged to prove and what case they must meet.¹¹

[32] Where, as in the present case, the defence of justification or truth is raised by the Defendants, involving an allegation of a specific misconduct, the so-called

⁹ Halsbury Laws of England, 4th Edn. Vol 28, para. 66.

¹⁰ *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraphs 32.30 and 32.31.

¹¹ *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraphs 27.1 – 27.2.

“conduct rule” will apply and the Defendants must prove some specific act(s) (or omission(s)) on the Claimants’ part in order to succeed in a defence of truth.

- [33] Where the imputation against the Claimants is something less than guilt, such as grounds for suspicion or for an investigation, then, at common law, it is generally necessary for the Defendants to prove some conduct on the Claimant's part that, objectively regarded, gave rise to the grounds for suspicion or for an investigation¹. Thus given the presumption of falsity which applies to defamatory statements once established, the burden of proving the truth or justification of any such statement or its meaning is on the Defendants.
- [34] The defence, or immunity, of absolute privilege, exists in respect of statements made in the course of proceedings, which would likely include the initiation of such proceedings, before a body which exercises a judicial function, such as a tribunal¹².
- [35] As a defence of absolute privilege has been raised by the Defendants in the present claim, it is for the Defendants to allege and prove all such facts necessary to bring the words complained of within the privilege; unless such facts are disclosed in the claim or otherwise admitted before or at trial of the action. Whether the facts so proved or admitted are or are not such as to render the occasion absolutely privileged, is a question of law for the judge¹³.
- [36] If, however, defamatory statements submitted to a judicial body is also published to parties, other than the judicial body (or tribunal) and parties involved in those proceedings, such as persons hosting a webpage, and are then published to others, then the person or entity hosing the website and publishing the defamatory statements, and the person sending them for publication, may be liable for libel for damages¹⁴.
- [37] The defence of fair comment clearly arises where there are matters on which the public has a legitimate, or with which it is legitimately, concerned, and on such matters it is desirable that all should be able to comment freely, and even harshly, so long as they do so honestly and without malice.¹⁵ Thus, absence of malice is

¹² *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraphs 13.15 – 13.16.

¹³ *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraph 13.2.

¹⁴ *Ibid* Paragraph 13.14.

¹⁵ *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraph 12.1.

fundamental to the defence of fair comment; and may also be considered in the assessment of damages - if the Claimants can show that the comment was actuated by malice, they will defeat the plea.¹⁶ *In the case of fair comment the Defendants' state of mind is therefore most material.*

[38] To succeed with a pleaded defence of fair comment, such as has been raised by the Defendants in the present case, the Defendants must prove

- (i) That the statements of facts are true,
- (ii) that the comments are fair, in the sense that an honest or fair minded person could hold that view,
- (iii) that the comment is a matter of public interest, and
- (iv) that they have defeated the Claimant's allegation of malice¹⁷.

[39] The onus of proof for items (i) to (iii) above is on the Defendants.

[40] In relation to the defence of fair comment there exists a legal requirement to plead the facts upon which they based their comments. The evidence to sustain the defence of fair comment will have to be largely, if not exclusively, directed to establishing the facts relied upon as the basis of the comment. Such facts have to be pleaded, and must be confined to those matters which have been so pleaded¹⁸.

Damages

[41] In cases of libel, the injury to the reputation is, of course, the principal element in the damages. Thus, as already noted, the Claimants need not allege that actual damage has resulted from the words complained of. 'A presumption arises in law that in the ordinary course of things, from the mere invasion of Claimants absolute right to reputation, that some damage will flow', and they are entitled to such general damages as the court may properly award, even without pleading nor proving any actual damage¹⁹. This arises from the mere invasion of such right to reputation, and such damage is known as "general damage".

[42] Thus Claimants in a libel action are not required to prove their reputation, not to prove that he has suffered any actual loss or damage... And the damages to be

¹⁶ Gatley on Libel and Slander, 9th Edition, Sweet & Maxwell [1998], Paragraph 12.2.

¹⁷ *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraph 12.2.

¹⁸ Gatley on Libel and Slander, 9th Edition, Sweet & Maxwell [1998], Paragraph 33.17.

¹⁹ Gatley on Libel and Slander, 9th Edition, Sweet & Maxwell [1998], Paragraph 26.27.

awarded are said to be “at large”, that is to say the award is not limited to any pecuniary loss that can be specifically proved.

- [43] Every person who takes part in or procures the publication of a libel is prima facie liable jointly and severally for all the damage caused by it. Thus if a libel appears on a website or Facebook page, the author of the libel and the owner of the Facebook and the website are prima facie jointly and severally liable ²⁰.
- [44] Where a claim for aggravated or exemplary damages for libel are pleaded and evidence of the conduct of the Defendants in support of those reliefs is led; such evidence can cover a broad ambit as the judge in assessing damages is entitled to look at the whole conduct of the defendant from the time the libel was published down to the time the decision is given. Evidence of matters tending to establish malice on the part of the Defendants is as a general rule admissible to support a claim for aggravated damages. ²¹
- [45] To support a claim for exemplary damages, however, there must be evidence that the Claimants knew that what the Defendants proposed to publish was defamatory and untrue, or that they were reckless, not caring whether the publication was true or false; and that they decided to publish because the prospects of material advantage outweighed the prospects of material loss. Evidence that the owner or publisher of defamatory statements on a website or Facebook page failed to check a story could be sufficient to found a case of recklessness. ²²
- [46] For a Defendant to attempt to mitigate an award of damages against him/it reliance may be placed on admissible evidence in the following categories:
- (1) Claimant’s bad reputation.
 - (2) Facts relevant to the contextual background in which the defamatory publication came to be made.
 - (3) Facts which tend to disprove malice.
 - (4) Claimants own conduct.

²⁰ *Halsbury’s Laws of England*, Vol 28, Butterworths, London (1978) paragraphs 18 and 38.

²¹ *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraph 32.49.

²² *Gatley on Libel and Slander*, 9th Edition, Sweet & Maxwell [1998], Paragraph 32.51.

[47] Although evidence of bad character is admissible the court will look very carefully at all the circumstance of the case and consider whether the Claimants' reputation is so bad that the defamatory statement complained of would reasonably and ordinarily cause much less damage than would be caused to a person of good reputation by the same statement²³.

Background

The Parties

- [48] The first Claimant ("SRWR") is a limited liability company by guarantee, not-for-profit, without a share capital incorporated under the laws of Belize ("SRWR") and the owner of Sanctuary Belize.
- [49] The second Claimant ("EFBL"), is a private limited liability company incorporated under the laws of Belize and by agreement, the designer and developer of the Sanctuary Belize.
- [50] The third Claimant ("GPA") is a limited liability company under the laws of the State of California, USA; and by agreement, is the marketing and sales processing agent of EFBL for the Sanctuary Belize project. The sole shareholder being one Peter Baker.
- [51] The first Defendant, Thomas Herskowitz, ("TH") is an owner of a plot of land in Sanctuary Belize of 2 ½ Acres.
- [52] The second Defendant, Independent Owners of Sanctuary Belize ("IOSB"), is a limited liability company by guarantee, not-for-profit, and without share capital incorporated under the laws of Belize, promoted by the First Defendant and others.
- [53] Although witnesses for IOSB testified that they were not a rival to SB HOA it is clear, after cross-examination and on the evidence, and this court accepts, that its objective is to rescue or takeover Sanctuary Belize – they consider, to save it from mismanagement by the Claimants.

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Promoters Concept of Sanctuary Belize Project

- [54] Prior to January 2003 the promoters of SRWR conceived of the Sanctuary project and decided to establish SRWR.
- [55] The objective was to raise funds for undertaking the development debt free, having virtually gifted the cost of acquiring the lands to SRWR, by selling off all residential and special development properties to purchasers.
- [56] The intention was to retain the nature and conservation portions in SRWR and apply the net proceeds of sale in the project after all sales, promotional and development costs, charges and expenses were paid.
- [57] Apparently the promoters intended to retain control of SRWR but to farm out the design, development, marketing, promotion and sale of the project to third parties; and grant, to all purchasers of land in the project, a special membership right without a vote in SRWR; while allowing them to attend and speak at meetings and participate on the Board of Directors, in order to secure their continuing commitment to the nature and conservation reserve.
- [58] It is unclear however whether this intention was properly communicated to all of the eventual purchasers, as some later appeared to be aggrieved by the failure to grant them full voting rights.
- [59] It is apparent that the promoters and SRWR also intended to promote and float a separate entity in the nature of a property or home owners association, comprising all purchasers of land in Sanctuary Belize and to join with SRWR and EFBL as Developer, in prescribing and administering a comprehensive scheme of Restrictive Covenants, Conditions and Easements over all lands, infrastructure, common areas; and other amenities within Sanctuary Belize.
- [60] Again, it is also unclear whether this intention was properly communicated to such purchasers; as again, when a separate foreign entity was formed and subsequently operated as a home owners association, at least some of the purchasers of land in Sanctuary Belize raised concerns.

SRWR Boasts of Many Accomplishments since Commencement of Business

[61] As at the date of trial the Claimants boasts that much has been accomplished by SRWR including the following:

1. EFBL was given an exclusive development contract to undertake, plan, survey, subdivide, develop and sell, lots and lands in Sanctuary Belize, at the costs and expense of SRWR.
2. EFBL also, in turn, gave GPA an exclusive contract to undertake, promote, market and sell lands in Sanctuary Belize internationally, at the costs and expense of SRWR and EFBL.
3. Under the arrangement; the net returns on sale of the lots and lands, after all costs, charges and expenses of EFBL and GPA are deducted, are to be applied in the development of Sanctuary Belize.
4. SRWR initially acted and collected dues from lot owners who were also provisional non-voting members of SRWR, provisional membership notwithstanding.
5. All lots and lands in Sanctuary Belize were promoted and sold subject to certain basic restrictive covenants, with the admission of the purchasers to membership of SRWR.
6. SRWR at first promoted Sanctuary Belize Home Owners Association as a Belize entity. But because over 99% of all members were outside Belize, it proved to be an inappropriate and ineffective way to organize property owners and collect assessments. On the advice of counsel, SRWR eventually promoted a property owners association comprising all purchasers of lots and other lands in Sanctuary Belize, called Sanctuary Belize Property Owners Association (“SB POA”), as a not-for-profit corporation under the laws of the State of Texas, in the USA, and duly registered it under the laws of Belize as an overseas entity doing business in Belize.
7. For the purpose of ensuring that all lands within the 14,000 acres of Sanctuary Belize are bound by, subject to, and run with the land, irrespective of ownership; uniform scheme of Restrictive Covenants, Conditions and Easements was created with SRWR as Declarant, EFBL as Developer and SB

POA as property owners association. This was also entered into, and registered, as a comprehensive scheme of Restrictive Covenants, Conditions and Easements to maintain property values, standards and investment value of Sanctuary Belize, as well as for its proper administration.

8. In spite of the initial slow pace of development in the first five years (apparently due to minimal sales and capital inflow and without borrowing for development), with the introduction of EFBL and GPA's successful business model, an intense promotion and sales campaign, Sanctuary Belize made some notable progress after 2010.
9. In terms of infrastructure, about 16 different authenticated survey and subdivision plans have been established which has comprised over one thousand separate parcels of land in Sanctuary Belize. The construction of about 32 miles of roadway was undertaken and completed, at approved grade standard; 55 culverts were completed; 18 miles of electricity distribution lines were established; 7 wells were dug, with 20 miles of potable water distribution lines established; 5 model homes were built; about 6 miles of canals and flushing channels were dug; 3,400 feet of sea wall, including marina with docks and fuel station, were erected; an equestrian facility and beach area have been built; and over 100 workers are employed in the project in Belize.
10. Together, SRWR, EFBL and GPA are apparently carrying on the trade or business of real estate development, promotion, marketing and sale of lands in Sanctuary Belize for profit.

Dispute between SRWR and its Members over HOA Dues and Financial Statement

[62] Sanctuary Belize as at 13th August 2014 had apparently sold approximately 1,000 lots (with about 600 separate owners), some owners having multiple lots.

[63] TH and his wife assisted in the sales efforts and were each paid US\$1,000.00., per month.

[64] Each owner of each lot sold had signed a similar purchase agreement with SRWR and EFBL as the Developer; each owner also signed a separate set of Covenants, Conditions and Restrictions (the "CC&R's) which were incorporated into every purchase agreement.

- [65] Under the purchase agreement, each member was supposed to be admitted to membership of SRWR; and under the CC&R's was obliged to make a monthly financial contribution to various undertakings; including: the establishing, maintaining and operating of the wildlife sanctuary, nature reserve and conservation park (Home Owners Association, HOA dues, are currently US\$100.00 per month).
- [66] Each member was also responsible for a proportionate part of the total expenses for maintaining the common areas (including: the paying of taxes, maintaining of roads, well and water supply, electricity supply, solid waste removal, security and wildlife protection, fencing, signage etc.) as well as GST.
- [67] Apparently, Sanctuary Belize Home Owners Association (SB HOA) was formed by the 3rd Claimant as a not-for-profit Company in October 2012. It was formed without giving any representation on it by members of SRWR.
- [68] A monthly invoice was also sent out to each member whose responsibility or commitment it was to pay it; and each was given instruction by SRWR to pay whatever was owing to a bank in the USA.
- [69] Numerous SRWR members have concerns with this arrangement and have withheld payments for various reasons; including: lack of financial reporting and, concerns, as to where the money is going – both points of contention, between SRWR and various members for some time.
- [70] Thus, despite SRWR's boasts of having accomplished much since its inception, it appears from a letter of TH, dated 13th August 2015, based on the above concerns, that all was and remains, not well, between the Claimants and numerous SRWR members. Apparently, many lot owners also have been complaining about the speed of the development as expressed on FB.
- [71] PKF Belize, Chartered Accountants, were engaged by the Board of Directors of SRWR and Sanctuary Belize Home Owners Association (SB HOA) to audit the Association's financial statements for the period ending December 31st, 2014 on January 20th, 2015. This audit was eventually done for the year ending 31st December 2014; with a clean letter of Opinion dated 24th July 2015.

[72] The Defendants had concerns about the audited financial statement. It appears that this financial statement brought the Defendants’ concerns to boiling point.

[73] The audit showed Membership fees of \$700, 945. and Trades Receivable from home owners of \$240,398.

[74] There was a concern felt by TH, likely legitimate at the time, that there was no legal basis to the amounts shown in the audit.

Allegations by TH against SRWR & GPA of ‘Misbehavior’ and against PKF Belize of Malpractice by Complaint Letter

[75] The concern about the audit felt by TH was set out in a detailed 4 page letter of complaint dated 13th August 2015, which he wrote. In this letter he, somewhat undiplomatically, accused PKF Belize of malpractice and implicated Mr. Jose Bautista at PKF Belize in possible fraudulent activity in complicity with SRWR. The letter contained the following words:

“There is no legal connection between SB HOA and SRWR or the homeowners and members of SRWR. There is no mention of SB HOA in any purchase agreement or in the CC&R’s. SB HOA is an unrelated entity formed by unrelated individuals with only the name Sanctuary Belize used in the name. A review of the original Articles of Association for SB HOA dated October 30th, 2012 limited the members to nine, none of them SRWR homeowners”.

.....
“Yet there are no legal connections between SB HOA and SRWR or EFBL. But there are numerous such connections with GPA in California. In addition to all the legal and financial interlinks discussed above, recent public statements by Andrew Usher indicate that GPA is greatly involved in the entire financial cycle dealing with the Home Owners dues. In that Q & A, SB HOA is not mentioned once; yet GPA is fully involved in the collection of the dues and even the payment of related expenses. In conducting its audit, how could PKF Belize miss the substantial legal connections and control of GPA with its interlocking directors and

executives and its pervasive influence over SB HOA? Or did it just not want to disclose such connections because it might embarrass its primary client, SRWR?

So that begs the question of how does \$700,000.00 of SRWR member's HOA payments get into an unrelated Belize company's financial statements? This is an audited financial statement. How can the auditors say that SB HOA receive \$700,000.00 in Membership Fees when no such fees are due to SB HOA? How can they say that SB HOA has a \$240,000.00 "Receivable from home owners" when the home owners have no such legal obligation to SB HOA? Where is there ANY legal obligation between the home owners and this SB HOA? If the auditors cannot even verify income and receivables owed to the company, how reliable is the rest of the 'audit'?

GST: *The annual audit states "support is shown net of general sales tax." Yet the audited report does not show any collections or payments of GST. Footnote #6 indicates that SB HOA owes \$15,950 of GST, but no explanation as to the full GST cycle. Yet every invoice includes the collection of GST and the payments received by SRWR from homeowners are \$112.50 per lot per month, which includes the payment of GST. This is over US\$87,500.00".*

.....

"The SRWR members, the homeowners at Sanctuary Belize, should be given the financial statements for SRWR, not some unrelated entity such as SB HOA. By not verifying the legal right to receive the membership fees or verifying the legal obligations of owners to pay such membership fees, I believe that PKF Belize has committed professional malpractice. And knowing that these audited financial statements will be sent to the SRWR members in an attempt to confuse them and obfuscate the true financial

condition of SRWR concerning the financial information that they are due for SRWR, not SB HOA, makes PKF Belize complicit in possible deception and fraud on the SRWR members. At the very least, it does not uphold the level of professionalism expected of a licensed chartered accounting firm.”

[76] This letter was sent to the President of ICAB, a regulatory authority of Accountants in Belize with powers of investigation into any such complaints; and then, IOSB published the same, on the IOSB website.

[77] The witness, Mr. Jose Bautista, testified that he was totally surprised by what he considered unfounded and unjustified allegations and innuendos made against him and his firm, PKF Belize, by the Defendants and as a result, he wrote a letter to the Defendants dated August 25th, 2015 to answer his concerns and demanded that they withdraw their unfounded complaint and allegations made against him.

[78] As a result of the complaint ICAB appointed a three person Investigative Committee to review the Complaint and to determine whether it should be submitted to a disciplinary committee. This Court is prepared to consider this body a judicial or quasi-judicial body as I anticipate it has to assess all the evidence or material before it before making a determination on whether to refer the matter to the disciplinary committee.

[79] There followed an investigation of the Complaint by ICAB which contacted both the complainant and the body being investigated, PKF Belize.

[80] The decision of ICAB was that the Complaint should not be submitted to the disciplinary committee.

[81] A letter dated 12th September 2016 was sent by ICAB and sets out the above process and its findings as follows:

“The Complainant’s primary complaint against PKF Belize is that it conducted an audit of a Belizean corporation, SB HOA, and credited to that corporation monies that have been paid by members of Sittee River Wildlife Reserve (“SRWR”). To his knowledge, SB HOA is a stranger to the members of SRWR, and has no legal right to the monies.

The Investigative Committee has been provided with an Assignment Agreement between SRWR and SB HOA pursuant to which all rights to collect membership fees were assigned to SB HOA, and all membership fees, past and present, were also assigned to SB HOA.

In view of the above, the Investigative Committee has concluded that PKF Belize had a proper legal basis on which to conduct the audit, and to conclude that the membership fees are the property of SB HOA for the period in question.”

We note that the Complainant has raised other concerns in his letter of 31st August 2015. However, we do not consider that any of the concerns raised would amount to misconduct on the part of PKF Belize, and so we do not consider that it would be appropriate to have the Complaint submitted to the disciplinary committee.”

[82] Apparently the ‘assignment’ in question may not have been shown to the homeowners prior to the investigations by ICAB.

[83] At no time, or at all, have the Defendants withdrawn their allegations or apologized to Mr. Jose Bautista, or indeed had IOSB remove the letter from its website.

IOSB and its Website

[84] IOSB was formally established in October 2015.

[85] Both the Defendant TH and the witness Douglas B. Stoeser are members of IOSB and sit on its Board as Directors with Douglas B. Stoeser as its webmaster.

[86] IOSB was obviously formed as some form of interest group to represent owners who own lots in Sanctuary Belize (which it called the Development), and to press, even agitate, the latter owners and the management on the many concerns it had with such owners and managers.

[87] IOSB’s purpose is set out on its website as follows:

"The Independent Owners of Sanctuary Belize (IOSB) is a Belizean incorporated non-profit association of concerned owners who

question the rate of progress of the development as well as fulfillment of promises made to us. The purpose of the Independent Owners association is to provide a unified owner group to treat with and evaluate the conduct of Sanctuary Belize corporate entities, foster formation of a proper owner lead HOA, support positive growth of Sanctuary, and to exchange information about the Development.”

[88] The Mission Statement of IOSB, as set out on its website, is as follows:

"This incorporated, non-profit, unaffiliated group of Sanctuary Belize property owners have joined together to promote and sustain the long-term wellbeing of the development. Our goals include, but are not limited to, ensuring both the Developer and the Marketer honor their established written and oral commitments in a timely way, and for SRWR to maintain the common grounds and provide expected services. Specifically, we want to ensure the timely construction and maintenance of durable and well-engineered roadways to all identified building lots, the installation of required utilities to all plotted lots, and the construction of all recreation centers and other amenities the Developer and the Marketer described and committed to when those lots were sold. While we very much prefer that this be done amicably by working in cooperation with these Sanctuary Belize corporate entities, if that is not possible, we are willing to engage professionals, including attorneys, to compel them to comply with their promises and legal obligations."

[89] In furtherance of its mission IOSB established a website, the expressed purpose of which is to provide information about Sanctuary Belize to the IOSB members and other Sanctuary Belize owners.

[90] The IOSB website compiles and provides static information that the IOSB members and Sanctuary Belize owners could not easily locate by themselves. It is also a resource that allows the IOSB board to communicate with its members and

other Sanctuary Belize owners as well as to express its opinion on matters relevant to the IOSB membership and the Sanctuary Belize community.

[91] The Board of IOSB relies on its web page to reach as many Sanctuary Belize owners as possible.

[92] The first day that the web site was accessible was on October 29, 2015.

[93] The website is a public website: it is open to the public.

[94] The IOSB Board of Directors in conjunction with Douglas B. Stoeser, the webmaster, make the decisions about what is posted on the IOSB Website; but with the webmaster having final determination to all such matters. Douglas B. Stoeser is the only person who has access to the IOSB website.

[95] The purpose for and rationale of the IOSB website, is stated on the website's "About" page as follows:

"This website provides news and information about the IOSB, Sanctuary Belize and related topics as well as web resources relating to the Development and its surroundings including the Kanantik development and Belize in general."

[96] Another important aspect of the website is to recruit owners to join and support the IOSB.

[97] As stated on the website, membership in the IOSB is voluntary but restricted to owners who agree to the following conditions:"

i) You certify that you have no affiliation with any Sanctuary Belize corporate or associated business interests nor are you are related to any person who does,

ii) You agree to keep the membership and transactions of the IOSB confidential, and,

iii) That you have read and concur with the IOSB Mission Statement."

[98] The website is obviously a vehicle, perhaps even an important vehicle, for supporting the goals of IOSB.

Allegation of Defamation on the IOSB Website in Relation to the Audit

[99] It was undoubtedly believed by the IOSB board, that parts of the audit by PKF Belize, were inaccurate and misleading.

- [100] The IOSB board also believed that awareness of this issue was important to its constituency of Sanctuary Belize owners.
- [101] It is alleged in the present claim (which is disputed), that TH, by said letter dated August 13th, 2015 to Mr. Reynaldo Magana, President of ICAB, that the Defendants published and caused the publication of this letter to the general public on the Defendants website at:
“<http://independentownerssanctuarybelize.com>” of and concerning the Claimants; and of and concerning the Claimants in the way of their trade or businesses.
- [102] As a result of the belief by the IOSB Board that parts of the audit by PKF Belize were inaccurate and misleading; that awareness of the problems with this issue and possible malpractice alleged by TH in his letter, was important to its constituency, Sanctuary Belize owners, the IOSB Board had to consider whether to publish on its Website the letter alleging malpractice to ICAB.
- [103] This court has carefully reviewed the disputed evidence connected to the possible publication of this letter; a subject of the present claim and the veracity of the witnesses, which this court had the benefit of hearing and seeing, and all the circumstances of the case. The view of this court, unhesitatingly, is that it considers that this letter was undoubtedly published by the Defendants on the 2nd Defendant’s website at: “<http://independentownerssanctuarybelize.com>”, and indeed still remains on the 2nd Defendant’s website.
- [104] It is disputed that the contents of the letter constitutes actionable defamatory statements, because of certain defences, which it is claimed are available to the Defendants.
- [105] Fundamentally TH maintains that the malpractice letter complained of by the Claimants was written on the factual basis of an audit that had been released to the home owners by the Claimants. He claims that the letter merely identified the inadequacy of the audited statements; and asked the ICAB to investigate whether the PKF Belize had properly discharged its duty, as a licensed Chartered Accountant.

- [106] The Defendants also deny that the words complained of in the letter were indeed false and had a malicious intent; and also dispute that the words bore the meaning alleged by the Claimants.
- [107] The Defendants raise as their defence that insofar as the words complained of consist of statements of facts, they are true in substance and in fact and insofar as they consist of expressions of opinion, they are fair and bona fide comment upon the said facts which are a matter of public interest.
- [108] It is therefore disputed that the said letter was falsely and maliciously written and published.
- [109] TH specifically denies that he ever published the subject letter, which this court accepts, insofar as such publication relates to the IOSB website, as in this regard it was indeed published by the 2nd Defendant and not TH. This letter was, however, undoubtedly published by TH to ICAB and to the board of the 2nd Defendant.
- [110] It is therefore alleged by the Claimants that commencing in or about the year 2015 and up to and including February 2016, and thereafter continuing; the Defendants allegedly falsely and maliciously published and or caused to be published to the general public on their website, certain defamatory words, relating to the letter of 13th August 2015, as alleged in the Claim Form, of and concerning the Claimants and of and concerning the Claimants in the way of their said trade or businesses.

Other Allegations of Defamation on the IOSB Website in Relation to Claimants

- [111] It is alleged in the present claim, disputed by TH and not denied by IOSB, that the Defendants, commencing in or about the year 2015 and up to and including February 2016, falsely and maliciously published and or cause to be published to the general public on their website at:
“<http://independentownerssanctuarybelize.com>” of and concerning the Claimants and of and concerning the Claimants in the way of their trade or businesses the following words:.

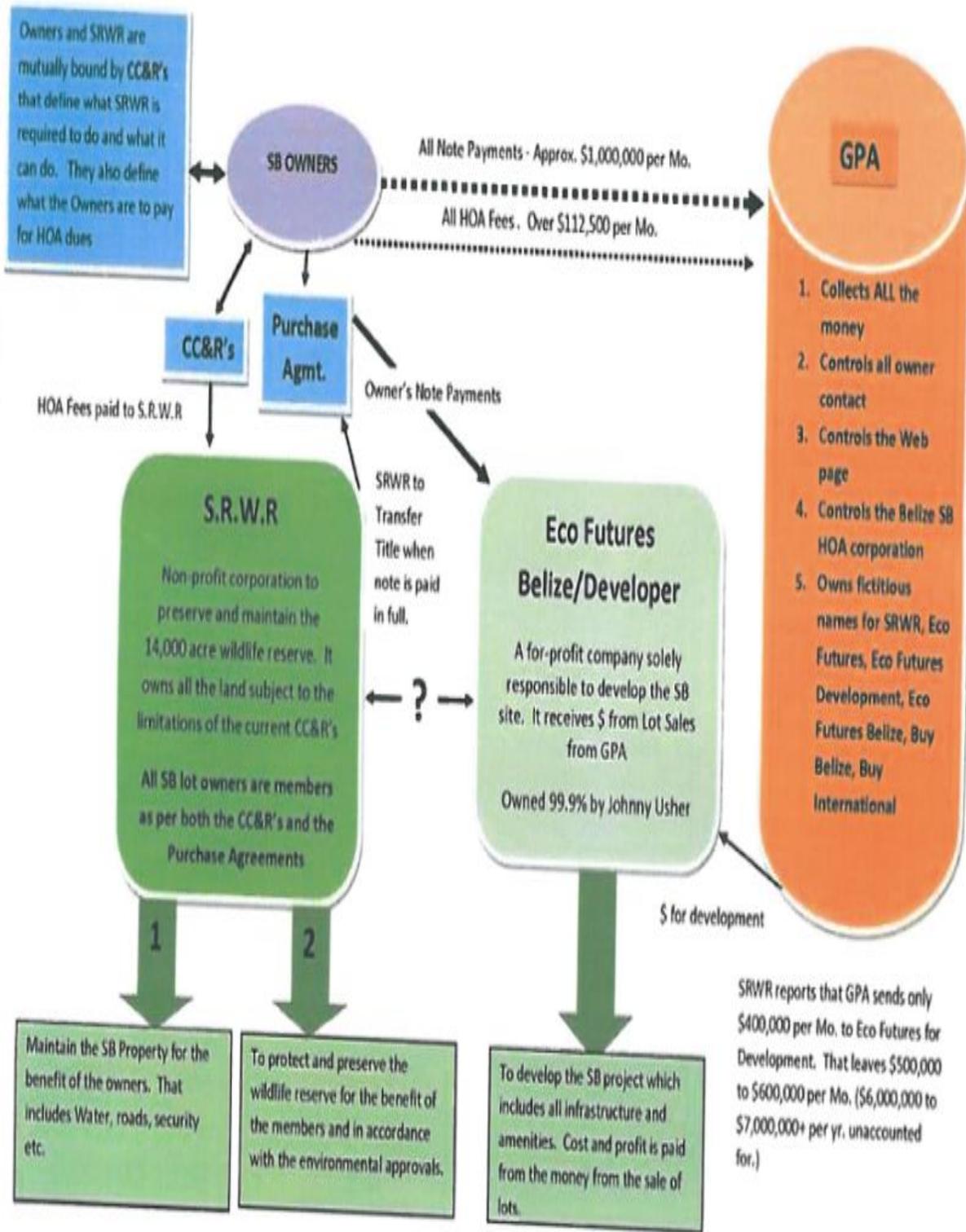
“However, Pukke is not finished with the Sanctuary Bay Development. By 2009, he’s back and by or before 2010, was once again directly involved.”

“In the period 2010-2013, there was a mysterious person named Marc Romeo involved with Sanctuary Belize and the Newport Beach office. The basis of the dispute is the claim by some owners and others that Marc Romeo is Andris Pukke using that name as an alias. GPA executives claim that Marc Romeo is a real person and that there’s been confusion between him and Pukke.”

“It is interesting that while Pukke is in prison in 2011, that Luke Chadwick in his late 2011 webinar presents that Marc Romeo (aka Andris Pukke) is a principal for Sanctuary Belize and C.O.O. for U.S. operations.”

“Since roughly spring of 2013, Mr. Pukke has pretty much vanished in terms of being seen publicly in association with Sanctuary and GPA. Though he is no longer visible, doesn’t necessarily mean that his role has changed, just that he’s staying out of sight.”

5/10/2016



“All we know is many millions of dollars over the years have gone into GPA and some of it funnels down to Eco-Futures Belize, Ltd., The developer. How much is used for GPA operations and how much goes to EFB for development (John Usher)?”

“If there is only \$100 Million in notes (as per Rod), what has happened to the other \$140 Million! \$10 to \$20 million max in development costs. OK double that, \$20 to \$40 million in development cost, although I don’t see anywhere close to that in actual work done. So where has the at least \$100,000,000 gone? That is a LOT of money!”

“There is a strong suspicion that a lot of the money from SB notes is going into marketing of Kanantic instead of into SB development as promised by Luke last year at this time.”

“There is still the issue that looking at the numbers for owner’s note receivables of, we are told \$140,000,000.00 there should be closer to \$900,000.00 to \$1,000,000.00 per month coming in for SB. That is the number that Luke quoted last April. So the issue is not \$200,000.00 being skimmed off of the top before it gets to SB in Belize, its closer to \$600,000.00 per month!”

“This is about what was ‘promised by the lying salesmen’ (to quote Chris) and what will the developer actually be building.”

“ILLEGAL FORCLOSURES - it has come to our attention recently that SB is illegally foreclosing on some SB owners. SB re-sells it at the full market value and pockets 100% of the sales proceeds. This is not ethical; it is illegal in Belize and in the US should not have their entire investment wiped out and effectively stolen from them through an illegal foreclosure procedure.”

Belize Lawsuit

“1. SRWR self-dealing by John Usher and other Board members:

(a) The Land Grab: In April, 2012, SRWR secretly sold 5,600 acres of its Upland Mountain tract to Eco Futures Belize.

(i) John Usher is currently operating a rock quarry and selling the material mined from the quarry to SRWR to build roads in “Sanctuary Belize” as

well as other uses such as building pads that require dirt and rocks. Thus the more roads constructed and the wider the roads in “Sanctuary Belize”, the more money Johnny makes.

(ii) There is also major logging taking place from this property that is taking big trees out of the rain forest that was once part of the Sanctuary Reserve. There is a logging mill in the rain forest near the quarry for cutting trees into lumber which is then sold for profit.

2. Misrepresentation:

(a) Even after the 5,600 acres of land was sold, sales and marketing materials still make the representation that SB consists of 14,000 acres, even though 40% of the property had been sold to John Usher’s private company. This sale also removes one of the 5 eco systems that “Sanctuary Belize” stresses in all its marketing materials.

(b) SRWR has become John Usher’s personal and family business: In 2006, shortly after sales began at Sanctuary Belize, there were 11 individuals on the SRWR Board of Directors, including Johnny Usher (the only Usher on the Board at that time) and 9 outside directors. In 2015, there were 6 Board members, 4 of them Usher family members and the other two long-time employees.

1. SRWR is in violation of Belize laws: SRWR is in violation of the following laws in Belize:

(a)

(b) Belize corporate law requires that membership lists are to be provided to all members upon their request. We have requested this information numerous times and the request has always been ignored.

Worse than not providing such annual audited reports was SRWR’s recent attempt to confuse and deceive its members by publishing the fabricated audit for Sanctuary Belize Home Owners Association (SBHOA) and representing to the owners that such financial statements met the requirement for the SRWR financial statements.

- (c) *Belize Currency Regulations require that all funds from the sale of real estate in Belize be deposited into a Belize account. By having all payments, cash for lots, note payments and HOA fees paid to GPA into its private bank accounts, SRWR is violating currency regulations of Belize. This means that all payments to GPA in the US should be to SRWR instead. This action has also diverted tens of millions of dollars to an unrelated US third party (GPA) that should have gone into the development of Sanctuary Belize, all with the approval of SRWR and to the material detriment of the SRWR members.*
- (d) *Investigation of public records shows that SRWR is not a registered non-profit company with the Belize Financial Investigation Unit (FIU). Belize requires that all not-for-profit companies register with the FIU. The FIU is an organization set up by the Belize government to crack down on money laundering. Compliance with this law enables Belize to avoid banking sanctions from the US and other countries for not stopping money laundering in Belize.....*

3. *SRWR violated Belize law and its duty to its members by allowing a known felon to participate in Board and other Sanctuary Belize Activities.....”.*

Allegation of Defamation on the Worldwide web on Facebook Pages

- [112] TH and Gerry Brown have a HOA and Sanctuary Belize Facebook Pages as a closed page; possibly the expressed purpose of which was, like IOSB’s website, to provide information about Sanctuary Belize to certain of its members and home owners.
- [113] There are other FB pages called ‘the Gathering’ and Belize Expats.
- [114] There may have been as many as 9 other such FB pages operated possibly by other persons.
- [115] There are 5 alleged extracts from the FB page which the Claimants allege, in the Claim form, to have been published on TH’s FB page. The last four of such extracts have been disputed by TH to have been so published.

[116] It is therefore alleged by the Claimants that during the same period, between in or about some time in 2015 to February 2016, the Defendants allegedly falsely and maliciously wrote and published and or caused to be written and published on the Worldwide web, on a Facebook Page, of and concerning the Claimants and of and concerning the Claimants in the way of their said trade or business, certain statements.

[117] A question therefore arises, what statements in the Claim Form were published on which FB pages?

[118] This court has carefully reviewed the disputed evidence connected to the possible publication of the statements on TH's FB page, the subject of the present claim, and the veracity of the witnesses, which this court had the benefit of hearing and seeing. In all the circumstances of the case, and, in the view of such considerations, this court, unhesitatingly considers that the evidence is not sufficient for this court to find that the last four statements, alleged, were published by the 1st Defendant on his FB page.

[119] This court therefore finds that the following statement was published by TH on his FB page:

“Then we saw that the HOA money and all note payments were going to GPA, a company started by Pukke and Peter Baker. We started seeing the money going into what appeared to be SRWR and Eco Futures accounts, only to find out that it was going in as DBA's (doing business as) in GPA accounts. So Pukke is very much involved with what is happening at SB and I began to see a pattern of multiple companies with similar sounding names to confuse owners and remember that was how he handled money at Ameridebt. I am not saying anything wrong is happening – apparently SB has pulled \$120 - \$130 Million out of this project.”

Meaning of the Words in the Letter Alleging Malpractice?

[120] In deciding whether or not the above statements relating to the malpractice allegation letter are defamatory, I first considered what meaning the words would convey to the ordinary man.

[121] This court has considered what the natural and ordinary meaning of these words were and what the Defendants meant and were understood to mean by them.

[122] I have no hesitation in summarily determining that the above words meant, and would be understood by the ordinary person to mean, the following:

- (a) that because there was no legal connection between SB HOA and SRWR or the homeowners and members of SRWR, the Claimants may be guilty of possible deception and fraud on the SRWR members by requiring them to pay monies SB HOA, to which it was not legally entitled and as a result such payments were unjustified;
- (b) that the Claimants and Mr. Jose Bautista (of PKF Belize) were complicit, in producing misleading accounts of SB HOA and SRWR to deceive the latter's members;
- (c) that the Claimants with the help of the same Mr. Jose Bautista were complicit in a scheme to deceive and defraud purchasers and members of the home owners association, of dues paid to SRWR , SB HOA and of the purchase money derived from the sale of lots in Sanctuary Belize;
- (d) that the Claimants and Mr. Jose Bautista of PKF Belize fabricated the audited financial statements for SB HOA and passed them off as those of SRWR;
- (e) that the Claimants are guilty of unethical and illegal conduct regarding the financing of Sanctuary Belize project;
- (f) that the Claimants likely stole US\$87,500.00 in Gross Sales Tax from the Government of Belize;
- (g) that the Claimants collected Gross Sales Taxes on behalf of the Government from home owners on false pretence; and then defrauded the Government thereof, as no such collection and payment was shown in the audit;
- (h) that the Claimants are engaged in an elaborate scam to fraudulently deceive home owners to pay money to them, which is then misappropriated and siphoned off into other projects and their pockets;

[123] I have no hesitation in holding that under the circumstances in which the words were published to ICAB and on IOSB's website, a reasonable person, to whom

the publication was made, would be likely to understand the above defamatory sense.

[124] I have come to this conclusion both in respect of the literal meaning and more so from the inferential meaning inherent in such words as well as from the general context in which they were published – thus I have concluded that the above is therefore the natural and ordinary meaning of the words in the said letter.

[125] This court considers that this is plain and obvious and does not consider that there is much room for disagreement as to the reasonable meaning of the above statements in the letter.

Meaning of the Other Statements on IOSB Website in relation to the Claimants?

[126] The Defendants have relied on these series of statements²⁴, set out above, which the Claimants say are defamatory.

[127] On the IOSB website it can be seen that it was mentioned that the Claimants are in business or associated with a felon named Andris Pukke, who also used an alias of ‘Marc Romeo’ in fact investor and director of GPA.

[128] The statements concern the involvement of Andris Pukke in Sanctuary Belize.

[129] Other references relate to the relationship between SRWR and GPA, the way they have managed the affairs of Sanctuary Belize and their relationship with the EFBL and all of their operations generally.

[130] The Defendants submit that the words are substantially true.

[131] It is conceded by the Claimants that Andris Pukke was an original subscriber of the SRWR and that he had been a Board member up until about 2005.

[132] It is also conceded by the Claimants’ witnesses that he had been convicted of a criminal offence. In fact, one of the Claimants’ witnesses, Mr. Kazazi, testified that he had given testimony on behalf of Mr. Pukke at a parole hearing in the USA.

[133] It is also conceded by the Claimants that Mr. Andris Pukke had employed the use of the name Mark Romeo as an alias.

²⁴ At paragraph 17 of the Statement of Claim.

[134] The testimony and evidence led by the Defendants is that Mr. Andris Pukke had been integrally involved in the Sanctuary Belize Project; and that as late as 2013 TH said he attended a meeting of the SB HOA, when he held the position of Treasurer and that Mr. Pukke was introduced as a developer on the project.

[135] The Claimants allege that the said statements are defamatory of the Claimants.

[136] The full nature and extent of the allegations and innuendos contained on the IOSB website has to be considered and determined by this Court.

[137] Again there is no real question but that there was some such publication on the IOSB Website of the statements which are alleged in the Claimant Form and the extent of such publication.

[138] Other such statements have been denied by the Defendants, particularly IOSB, were published.

[139] The Claimants allege that the words in these statements, in their ordinary meaning, meant and were understood to mean, the following:

- (a) that the Claimants are in business with a notorious felon named Andris Pukke, who passed off as one Marc Romeo (an in fact investor and director of GPA), by using a pattern of multiple companies with similar names to confuse owners and who was handling their monies in a similar manner as in his alleged scam at Ameridebt;
- (b) that SRWR Board is in breach of Belize law and its duty to members by allowing a known felon to participate on its Board and in other “Sanctuary Belize” activities.
- (c) that the Claimants misappropriated and cannot account for about \$6,000,000.00 to \$7,000,000.00 plus per year from the project;
- (d) that the Claimants are lying to owners about the project and where their money is going;
- (e) that the Claimants are guilty of embezzlement, of at least \$100,000,000.00 which is missing and cannot be traced to the project;
- (f) that the Claimants are swindling home owners out of their funds;

- (g) that the Claimants are acting unethically and illegally in foreclosing on some defaulting purchasers in contravention of Belize and US laws and then pocketing the proceeds of sale;
- (h) that SRWR is acting in breach of trust;
- (i) that SRWR is not registered with the FIU and is engaged in money laundering; and
- (j) that SRWR is violating exchange control regulations;

[140] The sting of the libel is that the Claimants had permitted the involvement of a convict who employed the use of an alias in its operations at the Sanctuary Belize Project.

[141] In deciding whether or not these statements are defamatory, I again first considered what meaning the words would convey to the ordinary man.

[142] This court has considered what the natural and ordinary meaning of these words were and what the Defendants meant and were understood to mean by them.

[143] I have no hesitation in summarily determining that the above words meant, and would be understood by the ordinary person to mean, the following:

- (a) that SRWR, EFBL and GPA are in business with a notorious felon named Andris Pukke, who passed off as one Marc Romeo (an in fact investor and director of GPA), by using a pattern of multiple companies with similar names to confuse owners and who was handling their monies in a similar manner as in his alleged scam at Ameridebt;
- (b) that SRWR Board is in breach of Belize law and its duty to members by allowing a known felon to participate on its Board and in other “Sanctuary Belize” activities.
- (c) that SRWR, EFBL and GPA misappropriated and cannot account for about \$6,000,000.00 to \$7,000,000.00 plus per year from the project;
- (d) that that SRWR, EFBL and GPA are lying to owners about the project and where their money is going;
- (e) that SRWR, EFBL and GPA are guilty of embezzlement, of at least \$100,000,000.00 which is missing and cannot be traced to the project;

- (f) that SRWR, EFBL and GPA are swindling home owners out of their funds;
- (g) that SRWR, EFBL and GPA are acting unethically and illegally in foreclosing on some defaulting purchasers in contravention of Belize and US laws and then pockets the proceeds of sale;
- (h) that SRWR is acting in breach of trust;
- (i) that SRWR is not registered with the FIU and is engaged in money laundering; and
- (j) that SRWR is violating exchange control regulations;

[144] I also have no hesitation in holding that under the circumstances in which the words were published on the IOSB website a reasonable person reading this website, would be likely to understand the words in the above defamatory sense.

[145] I have come to this conclusion both in respect of the literal meaning and more so from the inferential meaning inherent in such words as well as from the general context in which they were published – thus I have concluded that the above is therefore the natural and ordinary meaning of the words in the said letter.

[146] Again this court considers that the above meanings are plain and obvious and does not consider that there is much room for disagreement as to the reasonable meaning of the above statements on the IOSB website.

Meanings of the Offending Words in the FB Page?

Meaning of Words on the FB Page

[147] The Claimants have relied on the statements, at paragraph 18 of the Statement of Claim, set out above²⁵, which the Claimants say are defamatory.

[148] The Claimants allege that the words in these statements, in their ordinary meaning, meant and were understood to mean the following:

- (a) that SRWR, EFBL and GPA are guilty of unethical and illegal conduct regarding the financing of Sanctuary Belize;

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- (b) that SRWR, EFBL and GPA are engaged in an elaborate scam to fraudulently deceive home owners to pay money to them which is then misappropriated and siphoned off into other projects and their pockets;
- (c) that SRWR, EFBL and GPA are using a pattern of multiple companies with similar names to confuse owners;
- (d) that SRWR, EFBL and GPA are lying to owners about the project and where their money is going;
- (e) that SRWR, EFBL and GPA are swindling home owners out of their funds;
- (f) that SRWR is acting in breach of trust;

[149] In deciding whether or not the above statements are defamatory, I first considered what meaning the words would convey to the ordinary man.

[150] This court has considered what the natural and ordinary meaning of these words were and what the Defendants meant and were understood to mean by them.

[151] I have no hesitation in summarily determining that the above words meant, and would be understood by the ordinary person to mean, the following:

- (a) Misappropriation of funds to GPA and EFBL.
- (b) Involving a felon, Andris Pukke, in the business of SRWR.
- (c) Sanctuary Belize has pulled \$120 - \$130 Million out of the project.

[152] I have no hesitation in holding that under the circumstances in which the words were published on TH's FB page, a reasonable person, to whom the publication was made, would be likely to understand the above defamatory sense.

[153] I have come to this conclusion both in respect of the literal meaning but more so from the inferential meaning inherent in such words and from the general context in which they were published – thus I have concluded that the above is therefore the natural and ordinary meaning of the words in the FB page.

[154] This court does not consider that there is much any room for doubt or disagreement as to the reasonable meaning of the above statement on the FB page.

Whether the offending statements were/are justified or true?

The Statements Concerning the Letter of Complaint about Malpractice

- [155] The Defendants in their Defence²⁶ and in their written submissions²⁷ identified certain statements which they say were statements of facts or particulars of facts and matters relied upon which they say were true in substance and in fact. The Claimants, however, argue that the statements were untrue and baseless for reasons specified²⁸.
- [156] This court unhesitatingly has concluded that being unaware of the assignment to SB HOA that TH was not without reasonable justification in general terms to raise the substance of his complaint with ICAB, as it is clear that he had legitimate grounds to be concerned about the Audit and the general circumstances around it.
- [157] This court is quite satisfied that it may be that the general concern which TH and IOSB had about the audit may have been defused, and the matter possibly entirely resolved, if the assignment had been produced to them even before the investigation by ICAB.
- [158] It is therefore clear to this court, and this Court is satisfied, that the omission by the Claimants to provide the assignment, entitled the Defendants to persist in maintaining their complaint about possible malpractice by PKF Belize to ICAB both before the letter of complaint, and, in view of the fact that no such assignment has ever been produced to TH and/or IOSB, possibly even after ICAB communicated the results of its investigation.
- [159] It is the determination of this court that these imputations against the Claimants amount not just to allegations in the nature of facts, but when looked at in its totality, amounts to an allegation of a specific misconduct, of the Claimants colluding with PKF Belize to produce audited financial statements for which there was no proper legal basis (such as a legal assignment). These statements also

²⁶ See paragraphs 16, 17 and 19 of their Defence.

²⁷ See paragraphs 51- 62 of the Legal Submissions on Behalf of the Defendants filed herein on the 21st March 2017.

²⁸ See paragraph 40.00 of the Written Submission of the Claimants filed herein on the 21st March 2017.

involve allegations giving rise to the Defendants' belief, not necessarily about the Claimants' guilt, but that there are grounds for suspicion or investigation in relation to the Claimants' conduct in the management of their financial affairs, bordering on guilt.

- [160] Having considered all the evidence and heard the witnesses, this Court is less than satisfied that the Defendants have met their burden of proving misconduct on the part of the Claimants (that there was no proper legal assignment). This court is also less than satisfied that the Defendants have met their burden of proving conduct on the Claimants' part that objectively, can be regarded as giving rise to grounds of suspicion, or for any investigation, which the Defendants allege, of or relating to possible deception or fraud and/or misuse of general sales tax.
- [161] This is so despite this court's determination that in the circumstance of the case, this court considers that the letter could have been written in a more tempered or measured way, and not in the deliberately and using the inflammatory language that was used in the letter of complaint to ICAB.
- [162] Such an intemperate, clearly hostile, letter might be generally overlooked, as representing the legitimate concerns, even frustrations, of a person who believed that he had strong grounds to support his belief that a professional person may have been complicit in a scheme to dupe an unsuspecting and uninformed laity, and which was intended to be confidentially, and confidently vented, in writing to a professional association, which is also a regulatory body.
- [163] But in all the circumstances of the present case this court considers that the Defendants, particularly IOSB, in relation to that letter of complaint, ought reasonably to have thought long and hard, given the terms in which the letter was written, and considered that it would have been crossing a red-line, an impermissible line, and likely have been over-stepping the bounds of what was reasonable, by publishing the same on the IOSB website, where certainly anyone in Belize could have had access to it.
- [164] This court in all the circumstances of the case, including the general tenor and terms of the letter of complaint, and given that the Defendants could not properly pre-judge the outcome of the complaint to ICAB, even if it was published only to

its membership having an interest in its contents, ought not to have published it, either in its entirety to all other homeowners, much less the general public, and this court considers that in so publishing this letter the Defendants generally, and specifically IOSB, evinces, even palpably demonstrates, a total disregard for what ought properly to be done, amounting to what can only be described as malice towards the Claimants.

[165] Further this court considers that in relation to the publication to ICAB and on the IOSB website, the situation was entirely changed after the Defendants became aware of the letter from ICAB exonerating the Claimants (even if they were unhappy with the result). That the circumstances under which ICAB communicated the result of its investigation to the Defendants of the basis of its findings – that there existed an assignment from SRWR to SB HOA – there was a further change in the situation, transforming the situation, again, into conduct which was designed to injure the credit and reputation of the Claimants, and to bring the Claimants into public scandal, odium and contempt

[166] This court considers that by not publishing the letter from ICAB, exonerating the Claimants, and by not removing the initial letter of complaint to ICAB, a further red line was crossed. That by crossing this line the basis of any possible justification which the Defendants may have had, immediately dissolved, vanished, and the shield, any immunity, which may have been available to the Defendants, was entirely lost.

[167] Such loss resulted from what can only be described as a further spiteful, malicious omission.

[168] Such a further act or omission by the Claimants could not be defended by an assertion of truth; nor be considered as a bona fide comment upon the facts in the public interest.

[169] It seems to this court that any concern which the Defendants had about the bona fides of the exonerating letter of PKF Belize and/or the Claimants, ought to have more appropriately been channeled and vented by the Defendants by way of them commencing legal proceedings against ICAB and/or the Claimants, seeking appropriate remedies from a court.

- [170] This court, however, cannot find any reasonable justification, and nor can properly consider any plea of truth, given the malice which was evinced by such publication. This court has determined that for IOSB not to remove the letter of complaint from its website and/or to publish the letter from ICAB on its IOSB's webpage, is worthy only of judicial disapproval.
- [171] As far as this court is aware there has been no request by the Defendants, or either of them, for production of the assignment in the present proceedings; and no complaint can therefore properly now be made about the Claimant's failure to produce the 'assignment'. Also the Defendants called no expert witness to provide opinion evidence to this court to substantiate the defence of truth and the Defendants' opinion that there was something improper or untoward about the audited financial statements.
- [172] In arriving at these conclusions this court had to carefully consider the credibility of the witnesses as a whole and has reached its conclusion on the basis contained in the Written Submissions of the Claimants in relation to Malice²⁹.
- [173] On balance this court preferred the evidence of the witnesses for the Claimants and has specifically found the evidence of TH to be evasive, and neither forthright nor credible, wherever and whenever it conflicted with the evidence of the Claimants.

The Statements Concerning Andris Pukke on the IOSB Website & Facebook

- [174] The Defendants submitted that based on the evidence, this court is entitled to find that the sting of the libel in relation to Andris Pukke, is that the Claimants had permitted the involvement of a convict, who employed the use of an alias, in its operations at the Sanctuary Belize Project.
- [175] The Claimants submitted that Mr. Pukke resigned as a director of SRWR and withdrew from active participation in the affairs of SRWR; that Mr. Usher strongly denied that he tried to pass off Andris Pukke as Marc Romeo³⁰; and that the Defendants have therefore failed in their attempt to justify the truth of the allegations relating to Mr. Andris Pukke.

²⁹ See paragraph 44.0 – 56.0, particularly at paragraph 52.0.

³⁰ See paragraphs 40 – 44 of John Usher's witness statement.

[176] This court has carefully considered all the relevant evidence in the case and considered the veracity of the witnesses, and has arrived at the following conclusions:

- (a) In the present case the defence of justification or truth as raised by the Defendants, is generally not one involving an allegation of a specific misconduct, such that the so-called “conduct rule” will apply. The Defendants would therefore have to prove some specific act(s) (or omission(s)) on the Claimants’ part in order to succeed in its defence of truth. The exception to this is the allegation that “*SRWR violated Belize law and its duty to its members by allowing a known felon to participate in Board and other Sanctuary Belize Activities*”.
- (b) the imputation against the Claimants in relation to Mr. Pukke is something less than that the Defendant is guilty of any specific misconduct; but rather gives rise to grounds for suspicion, or for an investigation, about Mr. Pukke’s connection with the Claimants, such that there is a burden on the Defendants to prove some conduct on the Claimants’ part that, objectively regarded, gives rise to grounds for suspicion, or, for an investigation.
- (c) The specific imputation of violation of Belize law by Pukke’s participating on SRWR’s Board, has not been proved and is therefore defamatory of the SRWR.

[177] In the view of this court, after considering all the evidence and the general credibility of the witnesses, the evidence which is left for the court to consider is merely an unsubstantiated allegation, a mere cloud, in relation to, and placed over the management and operations of the Claimants and Sanctuary Belize with regard to Mr. Pukke. In the view of this court, far from the legal requirement of proof of any misconduct, which can be objectively regarded as giving rise to a ground for suspicion or for investigation, as is required in the present libel claim, what was not established, is truth, or even substantial truth.

[178] This court considers that in relation to Mr. Pukke’s evidence all the Defendants succeeded in doing is to sully the reputation of the Claimants without providing any

direct proof to substantiate the defamatory imputations against the reputation of the Claimants.

The Statements Concerning the Illegal Foreclosures

[179] The Claimants have pleaded that the statements relating to illegal foreclosures are false and malicious and have submitted that there is no evidence that SRWR is conducting illegal foreclosures in relation to the homeowners.³¹

[180] The Defendants in their Defence³² and in their written submissions³³ identified certain statements which they aver may be facts and which they claim may be found to be true in substance and in fact.

[181] The Defendants have pointed to the testimony of Mr. Usher who did concede that the contracts under which the foreclosures took place did not provide either an acceleration clause, or make specific provision for the consequences of foreclosure.

[182] The Defendants have submitted that there was therefore no provision which permitted SRWR or the Claimants generally from retaining all of the proceeds of sale over and above that which was owed. The Defendants have also submitted that in those circumstances the statement is true or substantially true.

[183] This court considers that in relation to this allegation, as the defence of justification or truth is raised by the Defendants, involving an allegation of a specific misconduct (that the foreclosures are illegal in Belize), the so-called “conduct rule” will apply, and the Defendants must prove some specific act(s) or omission(s) on the Claimants’ part, in order to succeed in a defence of truth.

[184] This court also considers that the other allegations, of unethical conduct, involving an imputation against the Claimants, is something less than guilt, but such amount to grounds for suspicion, or for an investigation, necessitating the Defendants to prove some conduct on the claimant's part that, objectively regarded, may give rise to grounds for suspicion, or, for an investigation¹.

[185] This court having considered all the evidence in the case considers that though the Defendants may not have discharged the burden of proving the illegality which they

³¹ See paragraph 40.0 (k) of the Written Submission of the Claimants filed herein on the 21st March 2017.

³² See paragraphs 18 of their Defence.

³³ See paragraphs 65 of the Legal Submissions on Behalf of the Defendants filed herein on the 21st March 2017.

allege, the Defendants more likely than not discharged the burden on them of proving that the allegation of unethical conduct may be substantially true.

The Statements Concerning the Belize Lawsuit and Other Allegations

- [186] The Claimants have pleaded that the statements relating to the Belize Lawsuit and other allegations are false and malicious but have made no specific submissions in relation thereto.³⁴
- [187] The Defendants in their Defence³⁵ and in their written submissions³⁶ identified certain statements which they aver may be facts, and which they claim are true in substance and in fact.
- [188] Violation of Belize currency regulations: The Defendants submit that the evidence supports the view that the Claimants were barred by Belize Central Bank from processing funds paid in respect of sales of property of Sanctuary Belize through accounts in the United States. Apart from the letter from the Central Bank directed to one of the purchasers which makes this plain, there is simply no other reliable explanation for why the company would have been prevented by the Central Bank from effecting what was an otherwise legitimate transaction.
- [189] Self-dealing by Johnny Usher and other board members: The Defendants submit that the evidence shows that John Usher as well as Peter Baker have engaged in self-dealing by profiting from the SRWR to which they owed a fiduciary duty, by transferring a significant property from SRWR to the EFBL, which was at the time beneficially owned by John Usher the Chairman of SRWR. That EFBL is now also beneficially owned by a company of which one Peter Baker is the beneficial owner.
- [190] Misrepresentation: The Defendants submit that Mr. John Usher, the witness for the Claimants conceded in his evidence that though there had been significant transfers of property from Sanctuary Belize to the privately owned for profit company of which he was the major shareholder, the Claimants have continued to market the Sanctuary Belize project as comprising 14,000 acres. This despite the fact that 40% of its property had been transferred to a private owner.

³⁴ See paragraph 40.0 (k) of the Written Submission of the Claimants filed herein on the 21st March 2017.

³⁵ See paragraphs 18 of their Defence.

³⁶ See paragraphs 65 of the Legal Submissions on Behalf of the Defendants filed herein on the 21st March 2017.

- [191] SRWR has become John Usher's personal and family business: The Defendants submit that Mr. Usher conceded that at various times there have been several family members on the Board of Directors of the company including at one point 5 family members at the same time.
- [192] This court considers that all of these allegations, as set out above, concern something less than guilt, amounting to grounds for suspicion or for an investigation, necessitating the Defendants to prove some specific conduct on the claimant's part that, objectively regarded, may give rise to the grounds for suspicion or for an investigation¹.
- [193] Having considered all the evidence I find that, though the Defendants may not have discharged the burden of proving any illegality, they certainly have discharged the burden on them of proving that the allegation of improper conduct may be substantially true – which this court therefore finds.
- [194] I also do not consider that the allegation relating to Non-registration with the FIU are defamatory; and neither do I find that the natural and ordinary imputation to be gleaned from the words relating thereto was that the Claimants were engaged in money laundering. I therefore accept, and therefore rule, that the natural and ordinary meaning of such statements are not generally capable of bearing the imputation relied on by the Claimants.
- [195] I also accept that such statement amounts to no more than a statement; that the investigation of public records did not reveal the company's registration, and was followed by an explanation of the organisation with which it was required to register, and its functions. I will not put a strained or unlikely construction upon these words. Such words are capable of bearing a number of interpretations and it would be unreasonable to seize upon only the bad one to give the words a defamatory sense.
- [196] I therefore consider that the Belize Lawsuit and other allegations just ruled upon in the Defendants' favour, are admissible to prove the Claimants bad character and may be used to mitigate the level of any award which this court would otherwise consider appropriate; as well as to provide a general mitigating contextual background to reduce the award which this court may otherwise have granted.

Malice?

[197] As already indicated, and for the reasons given, this court considers that malice has been proved in relation to the publication by the Claimants of the letter to ICAB both to persons not directly affected by such complaint and specifically on IOSB's website.

[198] This court also considers, for the reasons already given, that malice has also been proved in relation to statements concerning Andris Pukke.

[199] However this court considers, also for the reasons already given, that malice has not been proved in relation to illegal foreclosures and the other allegations which this court has determined in the Defendants' favour, as the Defendants have discharged the burden on them of proving conduct on the Claimants part that, objectively, may be regarded or may give rise, to suspicion about the Claimant's conduct, or may warrant further investigation in relation to the Claimants.

Whether the Offending words are privileged?

[200] As already indicated, and for the reasons given, this court had determined that it is prepared to consider that the publication of the letter to ICAB and the Board of IOSB is indeed privileged, because ICAB may be considered a tribunal to which absolute privilege may attach, and to which all of the communications such as the complaint to the board, may attach itself, as well as to communications or publications to persons with an interest in such complaint.

[201] However this court has determined that such privilege does not and cannot attach to the publication by the Defendants on IOSB's website; and to publication to persons not directly affected by such complaint.

Whether the Offending Words are Protected by Fair Comment?

[202] As already indicated, and for the reasons given, this court considers that the publications where the Defendants have not succeeded in proving truth and

justification, and have not defeated the Claimants' allegation of malice, fair comment may not succeed; but that in relation to all other statements, which have been found to be properly based, this court considers that such comments will be found to be legitimate and in the public interest, regardless of how harsh or even defamatory they were.

Damages?

- [203] The Claimants have withdrawn their claim for special damages but have submitted that their witnesses gave evidence that the defamatory words which have been proved to have been published by the Defendants, were part of the Defendants' attacks and campaign against the Claimants to bring down SRWR; all with the objective that Mr. Herskowitz and IOSB would take over the assets and liabilities of SRWR and manage and operate the project themselves³⁷.
- [204] The Claimants submit that the evidence is uncontroverted that the defamatory words were published in 2015 and 2016 and that during this time the Defendants brought Action No. 3 of 2016 to wind-up SRWR and to have IOSB manage and operate the project, including by collecting all the revenues from the sale of land, which are estimated to be in the millions.
- [205] The Claimants also submit that there are several local cases on libel and the quantum of damages which have been assessed by this Court, and upon a general survey of the cases, it would seem that the sum of \$25,000.00 to \$60,000.00 is the range for general damages and for costs awarded over the period 1999 to 2014³⁸.
- [206] Counsel for the Claimants have submitted that general, aggravated and exemplary damages for the libel on the Claimants ought to be in a sum upwards of \$60,000.00 payable by each Defendant.
- [207] Counsel for the Defendants have submitted that the Claimants are not entitled to any damages at all but that in any event such damages should only be nominal especially taking into account the case proved for justification.

³⁷ See paragraphs 53 – 55 of John Usher's Witness Statement.

³⁸ See *Lois Young Barrow v. Andrew Steinhauer and Belize Times Press Ltd.* See also *Dean Barrow v. Arthur Saldivar*.

[208] This court has taken all the facts and matters of the case into consideration and has determined not to grant exemplary damages.

[209] This court has carefully considered all the circumstances of the case, including the successes of both parties, the underlying background facts and any aggravating features; and has determined that the Defendants should be ordered to pay the following damages to the Claimants as follows:

(a) The First Defendant shall pay to the Claimants the sum of \$30,000.00 in general damages.

(b) The Second Defendant shall pay to the Claimants the sum of \$60,000 general damages, plus \$30,000 aggravated damages.

Costs

[210] Since the Claimants have largely succeeded on most of the many issues raised by the Defendants, and that this case has turned out to be somewhat complex in nature, the Defendant shall pay the Claimants' costs fit for two Counsel, to be agreed or assessed – which this court therefore will order.

Disposition

[211] For the reasons given above, the orders of this court will be as follows:

(a) The First Claimant shall pay to the sum of \$30,000.00 in general damages.

(b) The Second Claimant shall pay the sum of \$60,000 plus \$30,000 aggravated damages.

(c) Interest at the rate of 6% from the date the claim herein was filed, until judgment and interest from judgment to the date of payment pursuant to Sections 166 and 167 of the Supreme Court of Judicature Act;

(d) An injunction to restrain the Defendants and each of them, by themselves or by their servants or agents or otherwise howsoever from the publication of the offending words which this court has found to have been published by them or anyu similar words to the like effect. The Defendants shall take immediate steps to take down any offending statements, as determined by

this Court, from any Facebook and other Internet page under its control. A penal notice will attach to this order.

- (e) The Claimants are jointly and severally liable for the Claimants' costs fit for two Counsel to be agreed to assessed.

Hon Mr. Justice Courtney A. Abel