

IN THE SUPREME COURT OF BELIZE, A.D. 2017

CLAIM NO. 10 OF 2005

BETWEEN:

SELVIN JONES

Claimant

AND

**SETH WOODS
LAURINE WOODS**

Defendants

BEFORE: Hon. Chief Justice Kenneth Benjamin.

Appearances: Mr. Hubert Elrington, SC for the Claimant.
Mrs. Ashanti Arthurs-Martin for the Defendants.

JUDGMENT

[1] The Claimant is a building contractor who was engaged by the Defendants to build a house at Mile 4 ½ on the Northern Highway, Belize City. During March 2005 and in particular on March 2, 2005, the Defendants circulated a pamphlet bearing a picture of their incomplete house under construction and the following words:

“Have you seen this House?

Contractor walked off after receiving \$340,000.00

Leaving us with just a shell.

For more details on contract, or names of persons

Please call 600-3189 or

If this has never happened to you

Call 600-3189.

Homebuilders Beware!

House 4 ½ Miles on Northern Highway, By Musa

Belizean! Let's stop the riff off by contractors.

Join me and my wife in this campaign.

We appreciate your concern."

The said pamphlet was displayed in the windows and on the walls of various business establishments.

[2] By a Claim Form filed with Statement of Claim on April 12, 2005, the Claimant commenced suit for damages for libel contained in the pamphlet and an injunction restraining the Defendants their servants and/or agents from further printing, circulating, distributing or otherwise publishing any further copies of the pamphlet or similar words defamatory of the Claimant. In the Statement of Claim, the Claimant also claimed interest on the damages and costs.

[3] It was pleaded that the photograph and the words on the pamphlet in their natural and ordinary meaning were meant by the Defendants and understood to mean that the Claimant was dishonest, that he stole money from the Defendants and that he could not be trusted as a building contractor because he had taken the Defendants' money and left the job without completing the house. The Claimant averred that the publication of the pamphlet had lowered him in the estimation of right-thinking members of the society generally.

[4] The Statement of Claim also pleaded facts and matters to support a claim for aggravated damages, as follows:

"(i) The Claimant was formerly contracted by the Defendants to build their house.

- (ii) On or around March 2nd, 2005 the Defendants locked the Claimant out of the construction site and said to a number of individuals that he would ruin the Claimant.
- (iii) The manner in which the said pamphlet was published with the display of the picture and the accompanying words was calculated to suggest the Claimant was a thief and a con-man and could not be trusted and no one should employ him to build their house.”

[5] The Defendants filed a Defence and Counterclaim. The Defence admitted that the Defendants were clients of the Claimant and that they had circulated the pamphlet as pleaded by the Claimant. However, it was denied that the pamphlet was defamatory of the Claimant. The Defence averred that the words published were true in substance and in fact. It was admitted that the pamphlet was intended to mean that the contractor was dishonest as he had taken the Defendants’ money and left the job without completing the house; it was denied that the words in their ordinary and natural meaning meant that the Claimant stole money from the Defendants.

[6] In response to the matters pleaded in support of aggravated damages, the Defence responded that it was denied that the Defendants told anyone that they would ruin the Claimant and that they locked the Claimant out of the construction site on or around March 2, 2005. It was stated that it was the Claimant who had left the construction site and never returned and that the Claimant at all material times had keys to the premises which were unoccupied.

[7] The following particulars were set out in support of the plea that the words were true in substance and in fact:

“PARTICULARS

- (1) By virtue of an agreement dated the 22nd day of July, 2004, the Claimant agreed to construct a 2 storey concrete residential home for the Defendants for the agreed price of \$340,000.00.

- (2) Under the said agreement, the home was to be completed by the 14th day of January, 2005 which date of completion was not met and was subsequently extended to the end of January 2005.
- (3) On Friday the 18th day of February 2005, having failed to complete the construction as agreed, and having received approximately \$327,652.00, the Claimant left the construction site and failed to return on Saturday the 19th day of February 2005 or any date thereafter to complete construction of the said house.
- (4) The Claimant acted without reasonable or probable excuse, and left the Defendants with what was substantially only the outside structure of the house.
- (5) Most of the interior work was left incomplete, including woodwork, plastering and molding of windows and door frames, there was (sic) no bathroom fixtures, no closets, no kitchen cabinets, no inside stair, wooden floor was incomplete, exterior stairs were not plastered, inside of the house was not painted, windows, plumbing and wiring was incomplete, and many other details were left incomplete.
- (6) The Defendants had substantially paid the Claimant for the completion of their home, but at the time the Claimant left the construction site, the total value of the work left to be done was in excess of \$130,000.00."

[8] In the Counterclaim, the Defendants additionally detailed the terms of the Letters of Agreement dated July 22, 2004, and the construction commenced on July 22, 2004 based on a plan with an agreed completion date of January 14, 2005. The schedule of eight (8) payments made between July 26, 2004 and January 27, 2005 totaling \$327,652. 00 was set out. It was stated that the Claimant was paid the sum of \$29,000.00 out of the balance of \$37,830.00 in January 2005 and the time for completion was orally extended to the end of January 2005. Out of the \$29,000.00 it was said that the Claimant was expected to purchase tiles to the value of \$16,670.00 which was not done.

[9] The Counterclaim alleged breach of contract on the part of the Claimant, whom, it was averred, did not return to the construction site on or about February 19, 2005 without notifying the Defendants. A construction company was engaged to complete the construction of the house and it was estimated that the value of the construction work done was \$232,430.00 and that the work left to be done would take approximately 2 ½ months to complete and would cost \$134,964.93. The remainder of the Counterclaim listed the work that remained incomplete and the defects observed.

[10] The Defendants counterclaimed for the sum of \$95,222.00 overpaid to the Claimant, the sum of \$27,394.93 as damages for breach of contract and \$600.00 per month as rent from February 1, 2005 and continuing.

[11] The Claimant did not file a Reply and Defence to Counterclaim, thus while he will be taken to have joined issue on the Defence, he is assumed, as a matter of pleading, to have admitted the counterclaim. Rule 78.12 applies. It reads:

- “18.12(1) This Rules applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within permitted time.
- (2) The party against whom the ancillary claim is made
- (a) is deemed to admit the ancillary claim, and is bound by any judgment of decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim.”

Accordingly, the Defendants are entitled to judgment on the counterclaim without more.

[12] The main claim is one for libel. The issues as stated by the learned Counsel for the Defendants are adopted. The Court must determine the following:

- (1) Whether the words contained in the pamphlet are defamatory of the Claimant?
- (2) Whether the words have been published to a person other than the Claimant?

(3) Whether the words published are true in substance or in fact?

The Defendants have raised the defence of justification which has been specifically pleaded and which they must affirmatively prove.

COMMON FACTUAL GROUND

[13] The parties are *ad idem* that an agreement dated July 22, 2004 was signed for the construction of a three-bedroom reinforced concrete lower and upper level family home of approximately 3900 square feet. The contract sum was \$340,000.00 inclusive of equipment, materials and labour. The payments were to be made in phases in seven installments. The house was to be completed by January 14, 2005; however; the date of completion was not met and it was extended to January 29, 2005, by which date it was still not completed.

[14] By February 19, 2005, the Claimant had been paid the total sum of \$327,625.00. The Claimant did not return to the construction site after that date and he has not to date returned to complete the house. The Defendants alleged that he walked off the job after receiving almost \$340,000.00. The Claimant said that his workers were chased off the site leaving their tools behind. The Defendants claimed that the Claimant left behind a mere shell of a house with most of the interior work left incomplete. The Claimant insisted that the building was 95% complete.

[15] From the evidence of both the Claimant and the First Defendant, the payments were made in a timely manner but the work done in the phases did not accord with the payment schedule.

WHETHER THE WORDS ARE DEFAMATORY OF THE CLAIMANT?

[16] The Court must first determine whether the words are capable of being defamatory. In the present case, the words were coupled with an image. The name of the "Contractor" was not mentioned. However, the allegations were plainly aimed at the person in his professional capacity.

[17] The learned authors of Halsbury's Laws of England (4th ed. Reissue) Vol. 28, para. 10 stated:

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to disparage him in his office, profession, calling, trade or business.”

To be rendered actionable the libel must be published generally in writing or in print of and concerning the Claimant to a person other than the Claimant (Halsbury’s *ibid.* para 11).

[18] The Claimant pleaded that the photograph and words on the pamphlet conveyed the natural and ordinary meaning and the Defendants meant them to be understood to mean that the Claimant was dishonest and that he stole money from the Defendants, and further, that he could not be trusted as a building contractor because he had taken their money and left the job without completing the house. The Defendants denied that the photograph and words were meant to mean that the Claimant had stolen money from them. It was admitted that the meaning intended by the pamphlet was that the Claimant was dishonest as he had taken their money and left without completing the house. It should at once be said that the allegation of theft can hardly be sustained as being the meaning of the words as there was no suggestion that moneys had been taken from the Defendants but rather that the money was received voluntarily by the Claimant. The Defendant must therefore justify that the Claimant was dishonest and that having taken their money he left the job without completing the house. I am satisfied that the words are capable of bearing the meaning to which the Defendants have admitted.

[19] The Court must also be mindful of the dictum of Lord Devlin in Lewis v Daily Telegraph [1963] 2 WLR 1063. The Learned Law Lord said (at p. 1095):

“... it is the broad impression conveyed by a publication that has to be considered and not the meaning of each word or sentence analysis.”

In determining the natural and ordinary meaning of the words complained of, it is useful to be reminded of the summary of the applicable principles as set out by the Court of Appeal in **Gillick v BBC [1996] EMLR 267**, Neill, LJ stated (at p. 272 – 273):

“1 The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once.

2 The hypothetical reasonable reader or viewer was not naive but he was not unduly suspicious. He could read between the lines. He could read in an implication more readily than a lawyer and might indulge in a certain amount of loose thinking. But he must be treated as being a man who was not avid for scandal and someone who did not, and should not, select one bad meaning where other non-defamatory meanings were available.

3 While limiting its attention to what the defendant had actually said or written the court should be cautious of an over-elaborate analysis of the material in issue.

4 A television audience would not give the programme the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article.

5 In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer the court were entitled, if not bound, to have regard to the impression made.

6 The court should not be too literal in its approach.

7 A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally,

or be likely to affect a person adversely in the estimation of reasonable people generally.”

[20] The term “rip-off” appeared in the pamphlet. It is an informal expression that has found its way into everyday expression. It connotes an act of stealing or cheating, especially financially (Concise Oxford English Dictionary). Also, the word “shall” usually means an outer covering such as the walls of an unfinished building. (see: Concise Oxford 11th ed. Revised).

[21] The Defendants submitted that the Claimant was not mentioned by name in the pamphlet. Greer, LJ put the matter thus in **Bruce v Odhams Press Ltd 1936 1 KB 697** (at p. 705)

“The first observation that occurs to me as relevant is that it is an essential part of the cause of action of a plaintiff in cases of defamation, whether of slander or libel, that the words are defamatory of the plaintiff. If they are defamatory of some other person, real or imaginary, they do not provide the plaintiff with any cause of action at all. Defamatory statements which are in the air, as it were, and do not appear by their words to refer to the plaintiff, have got to be made referable to the plaintiff by reason of special facts and circumstances which show that the words can be reasonably construed as relating to the plaintiff.”

The burden falls on the Claimant to plead and adduce evidence of being identified as the person identified in the pamphlet by persons who saw the pamphlet.

[22] In this regard, the Claimant sought to refer to a television news item on Channel 7 TV News on March 1, 2005 during which the house and its interior was displayed and the Defendants were interviewed. During the interview, the First Defendant referred to the contractor by his first name “Selvin”. The news report spoke of interviewing the contractor’s lawyer after making attempts to invite comment from the contractor. In addition, the news reporter/interviewer categorically stated that he had in his possession an unsigned copy of the contract and schedule of 6 payments between the First

Defendant and the contractor. It thereafter follows that the news personnel from the TV Station were aware as to the Claimant being the contractor linked to the house. The testimonies of the Claimant and of his witness, Eugene King, did not assist. The latter witness' evidence was restricted to the works done on the house and the circumstances surrounding the termination of work on the construction site.

[23] In the Claimant's submissions, it was stated that the pamphlet was featured in certain newspapers. This was of no moment as no such evidence was led. The Defendants admitted circulating the pamphlet by posting it in windows and on walls of business establishments. The identity of the contractor was obviously known to the Defendants but the question is whether this was known to anyone who viewed the pamphlet.

[24] The presentation of the Claimant's case left much to be desired. Having said that, I am content to resolve the matter on the pleadings as I was invited to do by Learned Senior Counsel for the Claimant. Nowhere in the Defence did the Defendants take issue with the identity of the Claimant on the pamphlet. Accordingly, as tenuous as it is, I hold that the Claimant was identified as the contractor on the pamphlet. Further, in response to the second issue, the Defendants have admitted that the pamphlet was published to persons other than the Claimant.

JUSTIFICATION

[25] It is a complete defence to an action for libel for the Defendant to prove that the words complained of are true, the so-called defence of 'justification'. There is a presumption of law that defamatory words are false. Thus, the Claimant having established that the defamatory words have been published of him by the Defendants, it is for the Defendants to prove that the words are true as pleaded in the Defence (See: Halsbury's Laws of England, 4th ed. Reissue, Vol. 28, para. 82).

[26] In essence, the Defendants were tasked with affirmatively proving that the Claimant walked off the job after receiving \$340,000.00 leaving behind a shell of a building. There was no denial that the Claimant received the sum of \$327,652.00, which sum is less than \$340,000.00 but cannot be regarded as an unfair approximation.

[27] The Claimant and Eugene King gave evidence in support of the Claim while the Defendants gave evidence in support of the Defence. It must at once be said that having heard the evidence, where there is a divergence between the evidence of the Claimant and that of the Defendants, the testimony of the Defendants was preferred as being credible and truthful, although it was patent that the First Defendant at times suffered from lapses of memory. The record is replete with what were blatant untruths from the mouth of the Claimant. That conclusion was not difficult to draw having regard to what the Court observed in the video of the television news report as to the state of the incomplete house relative to the conflicting statements of the Claimants. A few examples will suffice to demonstrate the Court's conclusion.

- (1) The Claimant stated in cross-examination that when he ceased work on the house all the windows and doors were fitted and installed. The video showed missing windows and doors from the upper level of the house.
- (2) The Claimant said that all the plumbing and electrical fittings had been installed. Here again the video of March 1, 2005 belied that statement.
- (3) He told the Court that the kitchen cabinets were constructed but there was no visual evidence of this.
- (4) The most obvious misstatement was the untrue assertion that the interior staircase was erected. The video showed that there was no such staircase.

The Claimant's witness, Eugene King, also testified that lights and fans had been installed. He too was not credible as the video showed wires hanging from the ceiling and no installed light fixtures were observed.

[28] The issue arose as to whether the Claimant and the workmen walked off the job on February 19, 2005. The witness, Eugene King, alleged that the First Defendant was intimidating the workmen with a firearm on his person. This was the person who purchased food and beers for the workmen on Fridays. In addition, he had paid off the

entire purchase price save for a sum of approximately \$13,000.00. The contract required the Claimant to furnish all the materials. In contrast, the Claimant had not purchased tiles to the value of some \$9,000.00 and, in his estimation, the job required a further month to complete. On the balance, and having observed the demeanour of the First Defendant, I do not accept that the Defendants chased the workmen off the site. The Police did accompany the workmen back to the house for them to retrieve their tools which had been secured by the Defendants after the construction site was abandoned. I accept the Defendant's explanation that the Claimant did not return to the construction site on or about February 19, 2005

[29] Having had the benefit of repeatedly viewing the video of the interior of the house as at March 1, 2005, there was ample confirmation that when the Claimant ceased working on the house it was unfurnished on the inside. There were no electrical or plumbing fixtures, no interior staircase, no cabinetry, no closets, no finished floors, unfinished walls, no tiling and missing windows and doors. It was not difficult to embrace the Defendants' characterization that the Claimant left behind 'a shell' when he abandoned the work site leaving the house unfinished.

[30] Accordingly, on the evidence, the defence of justification has been substantially proven. The Defendants have proved that the Claimant received in the region of \$340,000.00 and walked away from the job leaving behind a shell for a house.

COUNTERCLAIM

[31] As previously stated, the Claimant did not enter a Defence to the Counterclaim and is therefore deemed to have admitted the same. It, therefore, only falls to the Court to award damages for the loss occasioned by the breach of contract in not completing the house by January 29, 2005.

[32] The Defendants engaged the construction firm of Pools and Jacuzzis of Belize (PJB) to complete the construction of the house. An estimate was provided which was admitted into evidence as an exhibit by consent. The value of the work done by the Claimant was calculated to be \$232,430.00 and the work to be done was valued at

\$134,964.93. The First Defendant detailed the work that had to be done in paragraphs 32 – 36 and 38 of his witness statement which was not challenged. Neither was there any challenge to the claim for rent of \$600.00 per month for the period of 1st February, 2005 to the date of occupation – September 12, 2005.

[33] The measure of damages has been stated in Halsbury's Laws of England, 4th edition Reissue, Vo. 4 (3) at para. 172 as follows:


"In general an employer's claim will be for breach of the contractor's single obligation to complete the works in accordance with the contract ... If the contractor wholly fails to complete the work the measure of damages is the additional cost of completing the works beyond that which would have been payable or paid to the contractor."

The Defendants paid \$327,652.00 to the Claimant and an additional \$134,964.93 to PJB thus giving an aggregate of \$462,616.93. The original contract price having been \$340,000.00, there was a loss of \$122,616.93 to which the Defendants are entitled as damage. In addition, the claim of \$3,000.00 for rent is awarded.

CONCLUSION

[34] The Claim stands dismissed. Judgment is entered for the Defendants on the counterclaim in the sum of \$122,616.93 as general damages and \$3,000.00 as special damages. The total sum of \$125,616.93 shall attract interest at the statutory rate of 6% from date of judgment until payment. The Claimant shall pay to the Defendants prescribed costs in the sum of \$21,342.40.

DATED this 29th day of September, 2017.


CHIEF JUSTICE
KENNETH A. BENJAMIN
Chief Justice