

IN THE SUPREME COURT OF BELIZE, A.D. 2003

ACTION NO: 281 OF 2003

(CEDRIC D. FLOWERS	PLAINTIFF
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(AND	
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(KAY L. MENZIES	DEFENDANTS
(BELIZE PORT AUTHORITY	

Mr. Rodwell Williams, SC, for the claimant.
Ms. A. McSweeney noted judgment for the defendants.

AWICH J.

10.2.2006. JUDGMENT

1. *Notes: Defamation; defences of justification and that the facts were not defamatory, did not lower reputation, and did not injure the claimant.*
2. At the trial of this case last Friday 3.2.2006, both defendants or their attorneys did not attend. Ms. Kay. L. Menzies, the first defendant, was the chairperson of Belize Ports Authority, the second defendant. The claim is against Ms. Menzies personally and against the Authority vicariously. The claimant, Mr. Cedric D. Flowers, and his Learned counsel Mr. Rodwell

Williams SC, attended. Mr. Flowers is a professional accountant, a member of the Institute of Chartered Accountants. On record, the Solicitor General was the attorney for both defendants. On 16.6.2003, a memorandum of appearance, signed by Ms. Minnet Haffiz, then Crown Counsel, was filed for both defendants. On 14.8.2003, a memorandum of defence, signed by Mr. Elson Kaseke, the Solicitor General, was filed for the defendants. The case remained pending by 4.4.2005, the date on which the Supreme Court (Civil Procedure) Rules, 2005, came into operation.

3. Pursuant to rule 72.3(3), of the 2005 Rules, the plaintiff, now claimant, applied for case management conference which was held on 9.11.2004, before the Registrar. Mr. Williams attended for the claimant. The defendants or their attorneys did not attend, although someone in the office of the Solicitor General had signed acknowledging receipt of the notice for the case management conference. The orders made at the conference included: attendance at a pre-trial conference on 24 January 2006, before a judge; disclosure of documents; rendering witness statements; and that trial was listed for 3.2.2006, in my court.
4. I held the pretrial conference on the appointed day, 24.1.2006. Mr. Williams attended. Again the defendants or their attorneys did not attend. Mr. Williams was of the view that “they”, attorneys for the defendant, might have decided not to defend the claim. Notice, dated 9.11.2005, for the pretrial conference to be held on 24.1.2006, had been signed on behalf of the Solicitor General and was on the case file. It was proof that the office of the Solicitor General was aware of the conference. I proceeded with the

conference. On the case file were two witness statements for the claimant and disclosure papers on his behalf. There were no witness statements for the defendants and no disclosure papers. I made three orders, namely; an order confirming the trial date, Friday 3rd February 2006 at 9:30 am; an order that the defendant deliver witness statements by 30.1.2005; and an order that costs would be in the cause.

5. On 3.2.2006, the case was called for trial. Again Mr. Williams attended, the defendants or their attorneys did not attend. There was on the case file, notice of trial signed by someone on behalf of the Solicitor General. There was no notice of change of attorneys. By authority of rule 39 of the Supreme Court (Civil Procedure) Rules, 2005, I proceeded with the trial.
6. The claimant testified as the sole witness. He adopted his witness statement dated 18.11.2005, and expanded on some points of facts. Of course, there was no cross-examination, the testimony stood alone and uncontroverted. That did not mean that the Court would accept everything said by the witness. The court still had obligation to assess the facts, and if there were improbabilities regarding some facts, disregard those facts.
7. The point of law raised in the defence were that, the incident recounted in the letter dated 3.2.2003, now exhibit C(CF)2, signed by Ms Menzies were true, and that the words therein were not defamatory. I have to state that the defence case stops at that and no more, since proof by evidence was not preferred. Of course, I have to be persuaded that the testimony of the claimant negated the two defences, on a balance of probability, in order for

me to decide that the case in defamation in libel form, has been proved by the claimant.

8. As regards the truth or not of the contents of the letter, I have to take the only testimony available, which in my view did not disclose improbable features. Where the contents of the letter by Ms. Menzies are at variance with the testimony, I take the contents of the testimony as the facts of the case.

9. The more material facts proved were these. Ms. Menzies was the chairperson of the Belize Ports Authority. The Authority was privatized on 18.1.2002. Mr. Flowers was engaged by Port of Belize Limited, the private company that was to take over the business of the Authority. Mr. Nwaege, a bookkeeper at the Authority, was upset because he could not get a job in the Port of Belize Ltd, the new owner. On 30.1.2003, he informed Port of Belize Ltd that he intended to leave his job on that day. The following day, 31.1.2003, Mr. Flowers asked Mr. Nwaege to do a back-up and separate some information that belonged to the Authority from that which would belong to Port of Belize Ltd; and then hand over the computer to a Mr. Espat of the Port of Belize Ltd. Mr. Nwaege did not oblige. Mr. Flowers asked to be given the CPU which had become the property of Port of Belize Ltd, his principal. Mr. Nwaege refused to hand it over. Mr. Flowers proceeded to take the CPU anyway; he did not use nor threatened the use of physical force. On 3.2.2003, Ms. Menzies wrote the letter complained about, exhibit C(CF)2. The letter was addressed to Mr. Flowers and copied to eight persons and the Institute of Chartered Accountants, to which Mr. Flowers is

a member. The contents of the letter were false where they differed with the above facts. In particular, Mr. Flowers did not threaten physical force and did not demonstrate “lack of ethics” in his action.

10. Following from my finding that the contents of the letter were false on the material facts that Mr. Flowers complained about, I have to reject, even at this early stage, the point of law defence of justification, that is, that the facts complained about were true.
11. The question to be answered to resolve this case is; whether the words in the letter by Ms. Menzies are defamatory in meaning, to Mr. Flowers. He pleaded that they were, according to their natural meaning or by *innuendo*, and he testified.
12. The wrong of defamation is the publication of a false statement concerning another person, without justification, and which false publication tends to lower the reputation of the person referred to in the estimation of right thinking members of society generally, and in particular, causes him to be regarded with ridicule, hatred, contempt, dislike and disesteem - see the old English cases; *Sim v Strech (1936) 52 T. L. R. 669*, and *Capital & Counties, Bank v Henty (1882) 7 App. Cas. 741*. The above original definition of defamation has been amplified over the years in court cases. That was inevitable because views about morality, religion, politics, business conduct, professional conduct and social views generally, do change over time. Included and added now to the definition is that defamatory publication tends to diminish esteem, respect, goodwill or

confidence in which the plaintiff is held, or tends to excite adverse, derogatory or unpleasant feelings or opinions against him - see *Black's Law Dictionary, Fifth Edition at page 375*. There has been several cases in Belize, in which defamatory nature of publications has been decided, examples are: *Barrow v Mai & Belize Times Press Ltd, 2 Bz. L. R. 64*, *Manuel Esquivel v Marconi Matus and Jorge Espat Action No. 83 of 1998*.

13. Given the meaning of the wrong of defamation and the meaning of defamatory material, can this court conclude, on the evidence available, that Mr. Flowers has proved his case in defamation?

14. The first answers in favour of Mr. Flowers are that; the publication was false, and was published, that is, brought to the attention of the eight persons and the Institute of Chartered Accountants to whom the letter was addressed. Bringing the letter to the attention of Mr. Flowers, was, of course, not publication in law.

15. As to the wrongfulness of the words, that is, its damage to the reputation of Mr. Flowers, it is helpful to set out the letter in full and assess its meaning. The letter stated:

“Dear Mr. Flowers,

Friday afternoon, 31st January, you entered Mr. Martins Nwaege's office on the premises of Port of Belize Ltd and requested that he back up the contents of his hard drive and hand the backup over to you. He resisted on the grounds that the hard drive contained Belize Ports Authority information that is in no way relevant to the operations of

Port of Belize Ltd. He did, however, agree to turn a backup over to you by Saturday morning 1st February, this being the time needed to segregate the Belize Ports Authority information.

You proceeded to confiscate his CPU, using threats of physical force, and then took it off the premises, despite Mr. Nwaeye's pleas for you to be reasonable.

By this letter, the Board of Directors of Belize Ports Authority expresses its extreme displeasure with your behaviour over the matter. We also strongly condemn the lack of ethics demonstrated by your unwillingness to allow Mr. Nwaeye to separate and back up BPA files prior to your taking possession of the CPU.

Please note that by copy of this letter all relevant individuals are advised of your misconduct.

Sincerely,

Kay L Menzies MBA
Chairman

cc: Hon. Ralph Fonseca, Minister of Budget Management
Hon. Maxwell Samuels, Minister of Transport, et. al.
Dr. Victor Gonzalez, C.E.O., Ministry of Transport, et. al.
Mr. Hugh McSweeney, C.E.O., Ministry of Budget Management
Members, Board of Directors BPA
Mr. Luke Espat, Chairman, Belize Ports Ltd.
Mr. Alberto Mahler, C.E.O. Port of Belize Ltd.
Mr. Phillip Johnson, Belize Bank Ltd.
Institute of Chartered Accountants"

16. Can the meaning of "defamatory" publication I have outlined above be attached to the letter by Ms. Menzies? The claimant contended that the meaning can be attached to the words of the letter. He expressly stated that the words in their natural and ordinary meaning or by *innuendo* meant and should be understood to mean:

- “(a) That the Plaintiff stole a CPU from the Defendants.
- (b) That the Plaintiff is a thief.
- (c) That the Plaintiff assaulted and or threatened to assault one Mr. Nwaeye.
- (d) That the Plaintiff is a violent person.

- (e) That the Plaintiff acted in an unethical manner.
- (f) That the Plaintiff is unethical.
- (g) That the Plaintiff is guilty of misconduct.”

17. I do not accept that the words, in the context of the entire letter, meant that the claimant stole the CPU and that he was a thief. It does not state so. It was understood that he was acting for Port of Belize Ltd. who had acquired ownership of the CPU. The letter implicitly recognized that the CPU would have to be given to Port of Belize Ltd.

18. I accept, however, that the meanings: that the claimant threatened use of force against Mr. Nwaege; that the claimant may be a violent person; that he acted unethically and was guilty of misconduct; do come out of the letter, and that those expressions do injure the reputation of the claimant by tending to lower his reputation in the estimation of right thinking members of society generally, and in particular, cause him to be regarded with ridicule, contempt, dislike or disesteem.

19. It was not necessary for me to rely on any *innuendo*, that is, some special meaning and the particular circumstances to arrive at the above meanings of the words published. For the meaning of *innuendo* - see *Gaznabbi v Hyde 3 Bz. L. R. 341*. The words in the letter were defamatory plainly on the face, according to their ordinary and natural meaning. Objectively the falsehood that the claimant threatened to use violence and acted unethically were attacks on his reputation.

They tended to excite against the claimant adverse opinion about his reputation, by bringing him into hatred, contempt, dislike and disesteem.

20. It is my conclusion that the claimant has proved his case. The defamatory publication was in writing. It was a libel. I enter judgment for the claimant, against Ms. Kay L. Menzies and Belize Ports Authority. The liability of the latter is vicarious.
21. I have considered the nature of the defamation, which is written and therefore a libel, and actionable *per se*, that is, without the necessity to prove injury or damages occasioned to the person libeled. I have also considered the extent of the publication. It included publication to a professional body to which Mr. Flowers is a member. My view is that damages of \$10,000.00 is sufficient redress. I make an award of \$10,000 damages. It will carry interest at 6 % per annum from today until payment. I also award costs to be agreed or taxed, to the claimant.
22. It was in evidence that the second defendant was privatized. If it was a statutory corporation and ceased to exist, difficulties may arise in executing the award in this judgment. A registered corporation could be revived, for specific purposes, can a statutory corporation be revived?
23. Pronounced this Friday the 10th day of February, 2006.

At the Supreme Court,
Belize City.

Sam Lungole Awich
Judge