IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 10 OF 2005

BETWEEN

SELVIN JONES	**Claimant/Applicant**
AND	
SETH WOODS **LAURINE WOODS**	**Defendants/Respondents**

BEFORE: HON. CHIEF JUSTICE KENNETH BENJAMIN

November 13 and 27, 2012.

Appearances: Mr. Hubert Elrington, SC for the Claimant/Applicant.
Mrs. Ashanti Martin for the Defendants/Respondents.

RULING

[1] By a Claim Form filed with Statement of Claim, proceedings were brought for libel against the Defendants who were clients of the Claimant, a building contractor by trade. The suit seeks damages and an injunction in respect of a pamphlet alleged to have been printed and/or produced by the Defendants, published in and around Belize City and circulated and distributed countrywide.

[2] The Defendants filed a Defence admitting to circulating a pamphlet and exhibiting such pamphlet in the window of their business establishment. It was averred that the pamphlet was not defamatory of the Claimant and that the words published are true in substance and in fact. It was denied that in their natural and

ordinary meaning, the words meant that the Claimant stole money from them but it was admitted that the words were intended to mean that the Claimant was dishonest.

[3] The Statement of Claim set out certain facts and matters in support of the Claimant's claim for aggravated damages. These matters included factual assertions relating to the engagement by the Defendants of the Claimant to build their home. These facts and matters were denied by the Defendants.

[4] By a Counterclaim, the Defendants claimed from the Claimant repayment of the sum of $95,222.00 by way of reimbursement for overpayment to the Claimant, damages in the sum of $27,394.93 for breach of contract and $3,000.00 as rent accruing as a result of the breach of contract together with interest on the said sums and costs. A Reply and Defence to Counterclaim was filed in answer to the Counterclaim disputing the breach of contract and the claim for damages and rent.

[5] The trial commenced before Muria, J. At the close of the case for the Claimant, in which the evidence of the Claimant and one witness was led, learned Counsel for the Defendants thereupon indicated her intention to make a no-case submission. The trial judge properly warned of the consequences and put the Defendants to their election. Thereafter, learned Counsel made an election and proceeded to make the submission of no case to answer.

[6] His Lordship rejected the no-case submission and ruled that there was a case to answer. In his judgment, Muria, J. accepted that in a civil case being tried without a jury, a defendant who has made a no case submission is usually precluded from calling any evidence to refute the evidence of the Claimant. Reference was made to **Boyce v Wyatt Engineering [2001] EWCA Civ. 692** in which Mance LJ said the follows:

> "First, where a defendant is put to his election, that is the end of the matter as regards evidence. The judge will not hear any further evidence which might give cause to reconsider findings made on the

> basis of the claimant's case alone. The case either fails or succeeds, even on appeal."

It follows that, the learned trial judge having ruled against the Defendants, there is no question of the Claim proceeding any further, but rather it must be taken that the Claim has succeeded in the merits. In the premises, judgment ought to have been entered for the Claimant.

[7] In his written judgment, the learned trial judge ends by saying as follows:

> "In this case the no case submission is rejected. The Defendants have a case to answer."

As earlier iterated, the judgment in its earlier paragraphs (at p. 3), recited the fact of the Defendants having been put to their election. That being so, there is no question of further evidence being led by the Defendants on the substantive claim.

[8] In the application presently before the Court, the Claimant seeks directions for assessment of damages. This step ought to be preceded by an order entering judgment in favour of the Claimant. Accordingly, the Court will afford the Claimant an opportunity to apply for judgment.

[9] Inasmuch as the issue of liability in the substantive claim has been for all intents and purposes determined, there remains outstanding the question of damages which remains unresolved and which is the subject of the application now being considered.

[10] The Counterclaim by the Defendants remains a live and separate claim. As I understand it, the no case submission does not operate to preclude the Defendants from leading evidence in support of the ancillary claim. Accordingly, the trial ought to proceed with evidence being led in support of the counterclaim. As reflected in the ruling of the trial judge, evidence has been led by the Claimant in response to the allegations raised in the ancillary claim by way of counterclaim.

[11] Returning to the present application by the Claimant, it has not been asserted that at the case management conference, directions were given for a trial on liability only in respect of the substantive Claim. Ergo, the Claimant must be taken to have led such evidence in respect of the entire Claim as well as in answer to the Counterclaim. It follows that the Claimant is not entitled to lead further evidence in support of his Claim. The assessment of damages is constrained by the evidence led thus far by the Claimant.

[12] The Court therefore rules that the application be dismissed and the Claimant be at liberty to file and serve within 14 days an application to judgment to be entered against the Defendants.

[13] There remains the matter of the future course of the proceedings in the light of Muria, J having demitted office and ceased to be a Supreme Court Judge. This eventuality is addressed in Rule 2.5(4) of the Supreme Court (Civil Procedure Rules 2005 as follows:

> "Where –
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> (a) a trial has been commenced but not completed by a judge; or
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> (b) any enactment or rules requires an application to be made to, or jurisdiction exercised by, the judge by whom a claim as tried, then if –
>
> (i) the judge dies or is incapacitated;
>
> (ii) the judge ceases to be a judge of the Supreme Court; or
>
> (iii) for any other reason it is impossible or inconvenient for the judge to act on the claim.

the Chief Justice may with the agreement of the parties nominate some other judge to retry or complete the trial of the claim or to hear any application.

[14] The trial of the Claim and Counterclaim has commenced and the trial judge has ceased to be a Judge of the Supreme Court. It therefore falls to the Chief Justice to seek the concurrence of the parties for the nomination of another judge to either complete the trial or retry the claim and counterclaim. Upon the conclusion of this step, the necessary directions will flow as to the course of the matter.

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KENNETH A. BENJAMIN
Chief Justice