IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO. 561

LOIS YOUNG BARROW **Claimant**

BETWEEN **AND**

ANDREW STEINHAUER
BELIZE TIMES PRESS LIMITED **Defendants**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Dean Barrow S.C. for the claimant.
Dr. Elson Kaseke, along with Mr. Kareem Musa, for the defendants.

—

DECISION

This is an application to have an interim injunction I granted in this case on 17th October, to be discontinued.

2. I do not think that there is an inviolable statement or principle that interlocutory injunctions are **never** available in libel cases. All the authorities however urge caution in considering the grant of an interlocutory injunction in claims of libel.

Indeed, the headnote in the law report on **Bonnard v Perryman (1891) 2 Ch. 269**, which is regarded as the precursor of the supposed rule, hence the rule in **Bonnard v Perryman**, states:

> *"The Court has jurisdiction to restrain by injunction, and even by an interlocutory injunction, the publication of a libel."*

3. In practice however, because of the importance attached to freedom of speech, courts have been chary and even reluctant to grant an interlocutory injunction prohibiting the publication of an alleged libelous statement. The rationale for this is no doubt that if at the end of the day the statement is found to be indeed libelous, the claimant would, in addition to being vindicated by the verdict, be entitled to damages on an exemplary or aggravated footing, this is reinforced by the cherished freedom of speech in nearly every society, including Belize.

   Blackstone wrote in 1769 that the liberty of the press is essential in a free state, and this liberty consists in laying no previous restraints on publication. "Every freeman", he said, "has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press" (Commentaries, Book 4, pp 151-2).

4. At the hearing of the claimant's application for an interlocutory injunction in this case on 17 October 2006, I granted it but not without some reservation.

5. The defendants have now filed two affidavits by the first defendant in support of their application to have me discharge the injunction.

In their first affidavit, they aver that they published what they did concerning the claimant in "the public interest" and the right of the public to know. In other words, though not expressly saying so, the defendants are raising the defence of justification. This is a defence open to a defendant in a libel claim. The effect is that the defendant admits the libel but puts up the shield of justification for publishing it. If this defence succeeds at trial, there would of course be vindication for the defendant for the publication.

6. In his second affidavit which, I must say was filed only yesterday, well after the application to discharge the injunction, the defendants now say as well they will justify the alleged libel at trial. This simply means that they stand by their publication and that it is true.

The defendants also now say that their publication is subject to the **Reynolds** qualified privilege. That is the decision of the English House of Lords in **Reynolds v The Times Newspaper Ltd. (2001) 2 A.C. 127**. This decision built on the traditional foundations of qualified privilege but carried the law in this area forward by giving much greater weight to the value of informed public debate of significant public issues.

The defendants also now say they will contend that the publications are also fair comment.

7. Mr. Barrow S.C. for the respondent/claimant opposed the application principally on the grounds that the defences of justification, qualified privilege and fair comment, on the evidence on the applicant's affidavits cannot succeed. He urged on me to adopt the flexible approach of other Commonwealth countries such as Australia and New Zealand in granting interlocutory injunctions

in defamation cases, unlike the seemingly rigid approach of Courts in England stemming from a line of authorities like **Bonnard v Perryman supra**.

8. I have given much consideration to the interim injunction in this case in the light of the express recognition and protection of freedom of speech and expression as a fundamental right in the Belize Constitution – section 12. But this freedom is not unalloyed and untrammeled. It is tempered by regard for the reputations of others. Freedom of speech is therefore not a licence to libel others. This is expressly recognized by subsection 2(b) of section 12 itself. And the tort of libel is about the law which *"is required for the protection of the reputations of other persons."*

9. In this application, I enquired of Dr. Elson Kaseke if his clients would give an undertaking not to continue publication of the claimant/respondent of the type she complains about. He declined. In other words, the attitude of the applicants strikes me as "publish and be dammed". Well, so be it.

10. However, having read the affidavits of Mr. Steinhauer for the applicants/defendants in which he has sworn to advance the defences of justification, qualified privilege and fair comment and giving due weight and consideration to the freedom of speech, I am constrained now to discharge the interim injunction I granted in this case.

I must say that that interim injunction was not a prior restraint order. It was aimed at the applicants/defendants **repeating** their publications of which the claimant complains.

11. We are only at an interlocutory stage in this matter. Therefore nothing should be done to hobble either side until after the trial and determination of this case. But in the face of the applicants' failure to give an undertaking not to repeat their publications of the claimant and they were to do so, or continue doing so, and at trial they were not to succeed, I need hardly underline the dire consequences that may flow.

I do not at this stage want to prejudge anything; we shall have to await the trial and its outcome. The applicants say they will justify. They therefore will have the burden to carry. In a defamation case, while some damage may be done by permitting the publication of what may later turn out to be false, it is however at trial that the truth or falsehood will be tested and the claimant vindicated if the applicants (defendants) cannot prove that the sting of the libel is justified or that they have some other defences the law will recognize. per Lord Justice Brooke in **Martha Green v Associated Newspapers Ltd (2005) The Law Reports, CA** at 972 para. 78.

12. Therefore informed by the necessary principle of freedom of speech, I will not restrain them further for now.

According, I hereby discharge the interim injunction I granted on 17th October.

A. O. CONTEH
Chief Justice

DATED: 9th November, 2006.