

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.
Mr. Kareem Musa for the defendants.

—

REASONS FOR DECISION

At the conclusion of the application on behalf of Ms. Lois Young, for an interim injunction in this matter, I granted the application restraining the two respondents from making any further publication concerning Ms. Young in their Newspaper The Belize Times in the way and manner in which she claims she has been libeled.

2. Ms. Young-Barrow is the claimant in these proceedings. She claims that certain publications in The Belize Times, of which the first respondent, Mr. A. Steinhauer is the editor, and the second respondent is the proprietor, are libelous of her.

3. It is for the avoidance of doubt, given the delicate nature of the application and its perhaps, unusual nature, at least in this jurisdiction, that I decided after my order, to put the reasons for it in writing. This I do having had the benefit of legal arguments by Mr. Dean Barrow S.C. for Ms. Young-Barrow and Mr. Kareem Musa for the respondents.
4. The matter came before me shortly after 2 p.m. yesterday and was originally ex parte. But shortly after the matter was called, Mr. Musa appeared and announced his representation on behalf of the two respondents and stated that all the papers in the application had been received by him.
5. The application was supported by an affidavit of Ms. Young-Barrow dated 16 October 2006 and filed on the 17th instant. The gist of her affidavit is to the effect that the respondents had on three previous occasions published materials in The Belize Times that were “unarguably defamatory” of her and she feared that unless restrained they intend to further the publication concerning her.
6. The power of the court to grant injunctions is provided for in section 27 of the Supreme Court of Judicature Act – Chapter 91 of The Laws of Belize, Rev. Ed. 2000. This states in so far as it is material, as follows:

“27(1) Subject to rules of court, the Court may grant...injunction...in all cases in which it appears to the Court to be just or convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.”

7. And the Supreme Court (Civil Procedure) Rules 2005 provide in **Part 17** for the making of an application for and the granting of **interim remedies** which are expressly stated in O.17 r.(1)(a) to include an **interim injunction**. And O.17 r.4 provides for the making of applications for interim injunctions and similar orders.
8. It is however the law that the grant of an interlocutory injunction is an equitable remedy and subject to the discretion of the Court – **Hardmor Productions v Hamilton (1983) 1 A.C. 191**. But this is not a discretion at large: its exercise is circumscribed by judicial authority. Indeed, although section 27(1) talks about what “appears just or convenient”, I am guided by the consideration that this is not a licence to grant an injunction whenever the Court dislikes what a particular defendant/respondent is doing. The discretion to grant or refuse an application for an interim injunction must be judiciously exercised, bearing all the circumstances of the particular case in mind.
9. This however, presents some difficulties in claims for libel and applications for interlocutory injunction.
10. It is, I believe, the importance attached to freedom of speech or expression in liberal democracies and polities that the jurisdiction to grant interlocutory injunctions to restrain publication of defamatory statements is “of a delicate nature which ought only to be exercised in the clearest cases” per Lord Esher MR in **Coulson v Coulson (1887) 3 TLR 846** quoted in **Gatley on Libel and Slander** 9th Ed. p. 633 para. 25.2.

11. Section 12 of the Constitution of Belize provides for the protection of freedom of expression while at the same time recognizing the need for protecting the reputations, rights and freedoms of other persons.
12. I consider freedom of speech and of the press one of the values cherished in Belize and which must, as far as possible, be upheld at all times by the Courts. But, of equal importance, is the reputation of peaceful law-abiding citizens. Therefore, mindful as I am of the delicate nature of the exercise of the jurisdiction to grant or refuse an interlocutory injunction in a claim for defamation, I am of the view that on the affidavit evidence that this is a proper case to grant the injunction I did in this matter. Indeed, I am guided by the admonition of Lord Coleridge in Bonnard v Perryman (1891) 2 Ch. 269, that *“The importance of leaving free speech unfettered is a strong reason in cases for libel for dealing most cautiously and warily with the granting of interim injunctions.”*
13. Although Ms. Young-Barrow in her affidavit says that the statements by the respondents are “unarguably defamatory” of her, this is a matter to be decided later. And O.68 r.4 of the Supreme Court Rules provides for a ruling on this by the Court – a ruling on meaning.
14. Although Ms. Musa in his submissions on behalf of the respondents stated that they will be relying on the defence of justification, I did not have the benefit of any affidavit evidence nor was any time asked for to file one.

15. I had nothing from the respondents. I therefore do not think that the rule in Bonnard v Perryman supra can, in the circumstances, avail the respondents to inhibit this Court from granting this injunction.

This, additionally to the averment by Ms. Young-Barrow that unless the respondents were restrained, they intended further publication after their three previous publications, caused me grave concern.
16. It is for all these reasons that I granted the application on the terms that I did.
17. In the unreported English case of A, B and C v Thames Television Ltd, March 3 1987, an interlocutory injunction granted to restrain the broadcasting of material referring to the plaintiffs as war criminals was upheld even though the defendants had stated their intention of justifying whatever it was they were going to broadcast. But the defendants refused to disclose the contents of the intended broadcast and were not asserting the truth of any statement that the plaintiffs were guilty of war crimes.
18. In the instant case apart from the assertion of justification by Mr. Musa, I have nothing to go on in this respect from the respondents themselves.
19. Ms. Young-Barrow, the claimant/applicant, is not a public figure; and I do not think she should suffer any more hurt to her reputation, as she apprehends, until the final resolution of her claim. She may or may not succeed at the end of the day. But I am satisfied, albeit

provisionally, that the words she complains about are capable of being defamatory. And until the final resolution of her claim, I think it is just and convenient to restrain the respondents from publishing anything in the nature of which she has brought her present claim.

A. O. CONTEH
Chief Justice

DATED: 18th October, 2006.