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

1. CLAIM NO. 4 OF 2006

BETWEEN: ROBERT GARCIA CLAIMANT

AND

1. ANDREW STEINHAUER
2. BELIZE TIMES LIMITED DEFENDANTS

2. CLAIM NO. 5 OF 2006

BETWEEN: JOHN FLOWERS CLAIMANT

AND

1. ANDREW STEINHAUER
2. BELIZE TIMES LIMITED DEFENDANTS

Mr. Dean Barrow SC, for the claimants in both claims.
Mr. Anthony Sylvester and Mr. Kareem Musa, for both defendants in both claims.

AWICH J

7.12.2007 J U D G M E N T

1. *Notes:- Defamation: definition; libel published in newspaper; defence that the words did not have the defamatory meanings ascribed by the claimants; defence of fair comment, no facts pleaded as true, no facts on which fair comment is based; whether the comment was fair and reasonable, other features of fair comment.*
*Damages; desirable to award the same or similar damages unless there are good reasons to depart, and inflation may be taken into account.*
*Preliminary application for an order to strike out defence of fair comment and defence of no defamatory meanings, rr: 26.3(1)(b) and (c) contrasted with an application under r:68.3 about pleading justification and fair comment in defamation claim; r:68.4 about an interlocutory application for a judge to determine whether the words are capable of the defamatory meanings pleaded.*

2. This is judgment in two claims, No. 4 of 2006 and No. 5 of 2006, consolidated for the purpose of trial because the subject matter and the defendants in both claims are the same. Mr. Andrew Steinhauer, the first named defendant, is the editor of a newspaper, The Belize Times, owned by Belize Times Press Limited, the second named defendant. Both defendants are joint defendants in both claims. Mr. Robert Garcia is the claimant in claim No 4 of 2006. Mr. John Flowers is the claimant in claim No 5 of 2006.

3. ***The subject matter of the claim and defence.***

On 25.12.2005, Mr. Steinhauer published in The Belize Times newspaper, an editorial which is as follows:

**"Receivership Incompetence**

The decision this week by the receivership management of the struggling

Novelo' Bus Line Limited Company to discontinue operations was a political one. We say it was a "political" one because it is the result of a politically-inspired agenda.

The receivership management as personified by former BDF Commandant Robert Garcia who is also an aspiring UDP candidate and member of the UDP Executive, and former BDF Major John Flowers is strategic only in that it is designed to make a well-orchestrated plot and a so- far well-executed plan to embarrass the government of the day, by riling up the tax-paying and commuting public. Nothing else could reasonably explain their total mis-management of the company over the past 21 months.

How did the receivership management fail this nation? Let us count the ways.

Immediately upon appointment it would seem that the sabotage began. Very quickly the company's oldest and most experienced employees were shown the door. Most were told that they had no benefits to collect, despite decades of service. The receivership management arrogantly persisted with this assertion despite being advised otherwise by competent authority until they were INSTRUCTED in no uncertain terms that this was not the case.

Manifest incompetence is one thing, but it is not the reason why Novelo's Bus Line was gutted in a mere 20 months. According to reports, under the change in management the company's rolling stock was 220 buses in operation, and a spare parts stock pile worth in excess of $1.2 million. Just last week a Department of Transport survey could only find 62 Novelo's Bus Line buses operating on the road, many with defects. And of these 62 buses more than half were buses that had been leased from a subsidiary company whose ownership is yet to be ascertained.

It is being reported in the media that the company now boasts an over-draft in excess of one million dollars, reportedly rang up to purchase spare parts, to go along with a fuel bill in the hundreds of thousands of dollars. In short the "expert" management of the receivers has employed policies

> that have depleted the company's assets, reduced ridership, exhausted stock, used-up goodwill, bankrupted credit, fired staff, and cut revenue collection by reportedly nearly half.
>
> And to cap it off, it would seem that certain private businesses flourished even as the bus company's declined. There are allegations which audits will clarify, of double-buying and principals acting agents. These are accusations whose validity only proper investigations, inspections, and assessments will determine. There are speculations which the passage of time, future deeds and words, will verify as right or wrong. But there can be no doubt. The Novelo's receivership management has been an unqualified disaster, so disastrous that it must be the work of saboteurs. Why else would you wilfully seek to inflict such pain to the families of hundreds of your workers, and so many thousands of commuters? Who wrote the book on mass-firing before Christmas? Who gave you instructions?"

4. On 6.1.2006, two separate claims were filed by each claimant; in each claim, the claimant complained that the editorial defamed him. Each claimed the reliefs of: "damages for the libel, interest, and such other relief as may be just, and costs".

5. The claimants pleaded substantially the same natural and ordinary meanings to the words of the editorial, which words they said, were defamatory. The meanings pleaded at paragraph 5 of the statement of claim of Mr. Garcia are as follows:

"5. In their natural and ordinary meanings the said words meant and were understood to mean that:

(1) the claimant was grossly incompetent and had so grossly mismanaged the Novelo's Bus Lines Limited, that he caused it to collapse.

(2) the Claimant was guilty of actually sabotaging the operations of Novelo's Bus Lines Limited, when in fact he was professionally and contractually obliged to protect and honestly and efficiently run the company.

(3) the Claimant was suspected or guilty of dishonesty and conflict of interest as general manager of Novelo's Bus Lines Limited

(4) the Claimant had misappropriated company property of Novelo's Bus Lines Limited, and had, as general manager, entered into contracts that benefited him while prejudicing the company.

(5) the Claimant was a selfish, cruel unconscionable person who callously unnecessarily and unjustifiably fired hundreds of persons at Christmas time".

6. The meanings pleaded at paragraph 4 of the statement of claim of Mr. Flowers are as follows:

"4. In their natural ordinary meanings the said words meant and were understood to mean that:

(1) the Claimant, as operations manager, was grossly incompetent and had so grossly mismanaged the Novelo's Bus Line Limited, that he caused it to collapse.

(2) the Claimant was guilty of actually sabotaging the operations of Novelo's Bus Lines Limited, when in fact he was professionally and contractually obliged to protect and honestly run the company.

(3) the Claimant was suspected or guilty of dishonesty and conflict of interest as operations manager of Novelo's Bus Lines Limited.

(4) the Claimant had misappropriated company property of Novelo's Bus Lines Limited, and had, as operations manager, entered into contracts that benefited him while prejudicing the company.

(5) the Claimant was a selfish, cruel unconscionable person who callously unnecessarily and unjustifiably fired hundreds of persons at Christmas time".

7. The defendants responded to each claim by filing identical memoranda of defence. They admitted having published the editorial. Their principal defence was that the words of the editorial did not have the meanings attributed to them by the claimants. "In the alternative", they pleaded fair comment and opinion on a matter of public interest. They did not at all plead justification, that is, that the contents of the editorial were true. Also missing was the usual fair comment pleading that: "to the extent that the words or some of them may not be true, they are fair comment". The material parts of one of the memoranda of defence are as follows:

**"DEFENCE**

3 It is denied that in their natural and ordinary meanings the said words, in their proper context; bore or were capable of bearing the meanings or any of them pleaded in paragraph 4 of the Statement of Claim. Absent those meanings, the said words are no libel.

4 In the alternative, the said words constituted the fair comment and opinion of their writer on a matter of public interest, viz the public transportation situation in Belize and the claimant as general manager [or operations manager] of Novelo's Bus Lines Limited in Receivership.

**PARTICULARS OF FACT UPON WHICH COMMENT IS BASED**

(i) The public transportation situation in Belize is and was of obvious concern to citizens.

(ii) There is an ongoing public debate as to the problems facing the Novelo's Bus Line and what measures are being taken to deal with it; and whether the measures taken by the Receivership are effective.

(iii) The media, including the Print media, is and has traditionally been one of the obvious forums for such a debate.

5. The Defendants deny paragraph 5 of the Statement of Claim, and repeat that the words published, apart from being no libel, constituted an honest expression of opinion.

6 the defendants therefore deny that the Claimant is entitled to any or any of the reliefs claimed".

8. As required, the claims were then listed for case management conference before the learned Registrar. She made the usual standard orders, namely, orders as to: disclosure of documents; the number of witnesses each party would call; when witness statements were to be exchanged, attendance of witnesses at the trial for cross-examination, attendance of parties at pre-trial review; estimated time for trial; and filing of listing questionnaire.

9. Thereafter, the parties duly attended pre-trial review. No application raising a preliminary question of law, or regarding the pleadings in

any way, was made by any party even at that late stage. The claims were ordered consolidated for trial, and a date of trial was confirmed.

10. ***The interlocutory application made at trial.***

After one postponement the claims, then consolidated, were presented for trial. In the meantime learned counsel Mr. Dean Barrow SC., for both claimants, had filed a joint application for an order that the statement of case (the whole defence) of each defendant, "be struck out" on the grounds that in each: the defence of fair comment was improperly pleaded having regard to r: 68.3 [of the Supreme Court (Civil Procedure) Rules, 2005]; the defence that the meanings of the words of the editorial were not defamatory was unsustainable; and that each statement of case disclosed no reasonable grounds for defending the claim and was an abuse of the process of court.

11. It is convenient for reference purposes and for understanding the nature of the joint application, to quote the material parts of the application. They are as follows:

**"NOTICE OF APPLICATION**

> The applicant, Robert Garcia [and John Flowers] apply to the Court for an order that –

(1) the Defendant's statement of case herein be struck out.

A draft of the order the applicant[s] seek is attached.

The grounds of the application are:

(1) The defence of fair comment cannot arise in the circumstances, the words complained of by the Claimant[s] being assertions of fact rather than expressions of opinion.

(2) The Defence that the words are not capable of bearing the meanings attributed to them by the Claimants, is self-evidently unsustainable.

(3) The Statements of Case filed by the Defendants thus disclose no reasonable ground for defending the claim.

(4) The Defence of fair comment is improperly pleaded, having regard to Rule 68.3 of the C.P.R.

(5) The Statements of Case filed by the Defendants [are], thus abuse of the process of the Court".

12. It must be noted that the application by Mr. Barrow, in which he did not cite the rule of the Supreme Court (Civil Procedure) Rules 2005, under which it was made, was *an application for an order that the statements of case of the defendants, be struck out*. It follows that, as a matter of law, it was made under ***r: 26.3 (1) (b) and (c),*** which are the rules regarding striking out pleadings generally. There is no rule in part 68 of the Rules, concerning defamation claim proceedings, that provides specifically for striking out a statement of case in defamation cases, unlike in the UK where part 53 of the Civil Procedure Rules

1998, (UK), provides for "summary disposal" procedures that include striking out pleadings in defamation claims.

13. The general requirement as to the time for making an interlocutory application is that: *"so far as is practicable, all applications relating to pending proceedings must be listed for hearing at case management or pre-trial review"*. Failure is visited by an order for costs- see ***r 11 of the Supreme Court (Civil Procedure) Rules, 2005.*** The application of the claimants should have been made at case management conference or at pre-trial review, not as late as at the trial. Had learned counsel Mr. Anthony Sylvester and learned counsel Mr. Kareem Musa, for the defendants, objected to the late application, I might have upheld the objection. The purpose for an application for an order that a statement of case be struck out is to save time and unwarranted expense by the defendant. The opposite was occasioned by the late application under consideration.

14. *Decision on the application, (whether to strike out defence of no defamatory meanings).*

I understood clearly that it was the submission by Mr. Barrow that in a defamation claim the defamatory meaning of the word complained of is a question of law, and was the duty of the judge to decide it. Mr. Barrow cited r: 68.4 in support of that submission. The point of law was made to urge the court to strike out the principal ground of defence.

15. With due respect to learned counsel, his application did not raise the question of the duty of a judge to decide the defamatory meanings of the words complained of, nor did the question arise. His application, to the extent that it brought in the meanings of the words complained of, stated that: "the defence that the words are not capable of the meanings attributed to them by the claimant is self-evidently unsustainable", and was an "abuse of the process of court", and "should be struck out". The question raised was the sufficiency or insufficiency of the particulars of the defence pleaded denying the defamatory meanings. If the particulars were not plausible enough to disclose a defence in law, then they would be regarded as unreasonable ground to defend the claim, and the court would strike

out the ground. It was a question to be decided under ***r:26.3 (1)(b) and (c),*** not under ***r: 68.4***

16. Rule 68.4 is about an application of a particular nature in regard to a claim in defamation. The rule allows either party, *"at any time after the service of the statement of claim, to apply to a judge in chambers, for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case",* It is a rule specifically applicable to an application for a preliminary assessment by the judge, of the meaning of the word complained of. The rule is not applicable to an application for an order to strike out pleadings generally in a defamation claim, or to other aspects of pleadings in a defamation claim.

17. In an application under ***r: 68.4,*** the judge is asked in chambers, if an application is made, to decide as a preliminary question, whether the word complained of in the statement of claim is capable of bearing the defamatory meaning pleaded – see ***Keays v Murdock Magazines [1991] 1WLR 1184 C,*** also ***Lewis v Daily Telegraph ltd [1964] AC 234.*** If so, then the question of fact sets in and will be decided on

evidence, namely, whether the word in the circumstances in which it was published to the reader is, as a matter of fact, defamatory, and of the claimant. That question of fact is for the jury, where trial is by jury. On the other hand, if the judge decides the preliminary question in the negative, he dismisses the claim right at that stage –see ***Capital and Counties Bank v Henty (1882) 7 App. Cas. 371.*** The rule originated from civil trial by jury. It was derived from the rule in criminal proceedings, sanctioned by a statute of King George; 32 Geo 3 c. 60, section 1, (Fox Act). There have been several judgments about this interlocutory duty of the judge and how it has been advanced further by the new Rules of Court, 2005, examples are: ***Mapp v Newsgroup Newspapers Ltd [1998] C.A. 520,*** and ***Aspro Travel Ltd v Owners Abroad Group [1996] 1WLR. 132.***

18. I shall mention here that in Belize, although parties may elect trial of a civil case by jury, I have not seen the priviledge exercised. So in a defemation case in this jurisdiction, where the judge has decided as a preliminary and interlocutory matter on an application, that the word complained of is capable of a defamatory meaning, he simply proceeds to hear evidence himself, without a jury, to decide the case

finally on the facts proved or not proved. It has been stated in ***Safeway Stores v Tate [2001] QB1120 CA,*** that in a defamation claim, an application for an order that a statement of claim be struck out cannot be used to determine a question which is suitable for determination by a jury. I shall add that the application cannot be used to determine a question suitable for determination by a judge on evidence.

19. The application by Mr. Barrow for an order striking out the statement of case of the defendants, including the defence denying the defamatory meanings, was not the same thing as an application under ***r: 68.4***, for the judge to determine as a preliminary question, whether the words of the editorial were capable of bearing the defamatory meanings complained of.

20. As to the substance of the pleading regarding the defamatory meanings, I considered that evidence at trial might disclose circumstances that might render some of the sting in the words complained of harmless, or even ameloriate some of the meanings for the purposes of award of damages, in the event, the court should

decide for the claimants. I also considered the fact that the editorial was entitled: "Receivership incompetence"; it was possible that the words therein may not refer to each claimant personally. I concluded that in each claim the defence of non-defamatory meaning was not so baseless as to warrant striking out. I have not ventured to use the new test of "no real prospects for bringing or defending the claim", introduced in the UK by the Civil Procedures Rules, 1998 (UK). We do not have a similar provision in our Rules, so we continue to apply the rule that a statement of case will be struck out only in cases that are plainly untenable.

21. For the reasons given above, I ruled that the defence that the words of the editorial did not have the defamatory meanings attributed to them, could not be struck out as an unreasonable ground for defending the claims, under ***r:26.3(1)(b) and (c).*** To that extent, I dismissed the joint application of the claimants.

22. Nonetheless, having read the editorial, I took the liberty to examine the words complained of with a view to assessing whether they were capable of having the defamatory meanings attributed. I concluded

that the words, and the editorial as a whole, were capable of bearing the defamatory meanings. I would have, had an application been made under ***r: 68.4***, for determining as a preliminary issue, whether the words were capable of bearing the defamatory meanings, passed on the two claims for trial to establish by evidence whether as a matter of fact in the circumstances, the natural and ordinary meanings of the words used and the editorial as a whole, could be understood by the ordinary reasonable person who read them, to have the defamatory meanings attributed by the claimants. So, if the defendants made an interlocutory application challenging the defamatory meanings of the words, they would have not succeeded in stopping the case at that stage. Under ***r: 68.4*** the claimants can also make an application for the determination that the words are capable of having defamatory meanings. Usually that is done to challenge the "Lucas-Box meaning", advanced in the defence by the defendants as the meaning of the word complained of, instead of the meaning pleaded by the claimant.– see ***Lucas-Box v News Group Newspapers [1986] 1WLR 147.***

23. On the other hand, I allowed the application to the extent that I ordered the alternative defence of fair comment struck out. The pleading about fair comment was plainly unsustainable. The final result of the joint application was that both claims would proceed to trial, and the only defence available was that denying the defamatory meanings attributed to the editorial by the claimants.

24. Mr. Barrow immediately complained about the ruling that the principal defence denying the defamatory meanings be proceeded with to trial. He continued raising it in the form of objections to questions in cross-examination. I would have thought a court ruling, closed the particular question at the court that made the ruling, any further complaint would be the business of the next higher court, on appeal.

25. Learned counsel Mr. Musa, was also not happy with my ruling. He was unhappy that I allowed the claimants' application to the extent that I struck out the defence of fair comment. Mr. Musa asked that the trial be adjourned to enable the defendants to appeal the part of the ruling ordering that the defence of fair comment be struck out. His

reason was that fair comment was their "main defence". He obviously overlooked the fact that in the pleading they stated that it was an alternative ground for defending each claim.

26. The ruling was an interlocutory decision and order. To stop the proceedings and allow time for an appeal would not be consistent with the rule that the over-all overriding objective of the Rules of Court regarding civil case procedure is to deal with cases justly. Two factors of time and expense in the overriding objective, would not be saved, if I adjourned the case so that an appeal on the interlocutory ruling could be pursued first – compare the judgment of Lord Woolf in, ***McPhilemy v Times Newspapers Ltd [1999] 3 All ER 775.***

27. Most of us trained in the adversarial tradition have not yet fully embraced much of the non-adversarial spirit introduced by the Supreme Court Civil Procedure Rules 2005, and have not fully appreciated how much the Rules save time and costs. An application for leave to appeal the interlocutory ruling in these claims might have resulted in long submissions, and much delay in concluding the trial. Whether the Court of Appeal would allow the appeal or dismiss it, the

parties would return to this court to proceed with the trial, and possibly appeal the final determination.

28. In the end both Mr. Sylvester and Mr. Musa appreciated the inconvenience and expense that would be avoided, if they proceeded with the trial of the claims and appealed at the conclusion of the entire trial, in the event it would be necessary to appeal. They proceeded with the conduct of the defendants' case until conclusion. Of course, they had no choice but to comply with the ruling of the court refusing their request for adjournment. Failing to proceed would risk judgment being entered against the defendants without the benefit of cross-examination of witnesses for the claimants and without the benefit of hearing the defendants and their witnesses.

29. *Whether to strike out the defence of fair comment.*

My reasons for striking out the alternative defence of fair comment now follow. First I agreed, with Mr. Barrow that the defence of fair comment was not properly pleaded in accordance with r: 68.3 (c) of the Supreme Court (Civil Procedure) Rules, 2005. The entire r: 68.3 is as follows:

"68.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that;

(a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and

(b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or

(c) pleads to like effect,

must give particulars stating –

(i) which of the words complained of he alleges are statements of fact; and

(ii) the facts and matters relied on in support of the allegation that the words are true."

30. It is clear that sub-rule 3 (c) requires the defendant pleading fair comment on a matter of public interest, to give particulars as to which of the words complained of are statements of fact, and the particulars relied on to support the truth of the words. It is not surprising that those requirements were not met by the defendants in these claims.

31. The words in the editorial were all "statements of facts" and were untrue. The statement that "the decision to discontinue operation was

a politically inspired agenda", is one of fact; the defendant did not plead that it was true or that an agenda existed. The statement that, "nothing else could explain their total mismanagement of the company over 21 months," presupposes that there had been total mismanagement; the defendants did not plead that to be true. The statement that, "immediately on appointment it would seem that the sabotage began", suggests that there was sabotage; the defendants did not plead that there was sabotage as a matter of truth. The statement that, "only 62 buses out of 220 were found", and that, "more than half were leased from a company whose ownership was yet to be ascertained", is a statement of facts; the defendants did not plead that the facts were true. The statement that "the receivers employed policies that have depleted, assets, reduced ridership, exhausted stock, used up goodwill, bankrupted credit, fired staff and cut revenue collection…" is a statement of several facts; the defendants did not plead their truth. The statement that, "certain private businesses flourished while the bus company's declined, and that there was double buying and principals acted as agents", is also a statement of several facts; it was not pleaded that they were true.

32. I can approciate that the defendants could not plead that the statements I have identified were true. They would be unable to prove so by evidence at trial. They should have thought about that right at the time they decided on the editorial. If they did, they deliberately took the risk of a court claim against them. In fact it became clear at the trial that the defendants knew that what they decided to publish were not true. Mr. Steinhauer testified that the statements were his opinion. In the circumstances it may be said that he intended spite. I shall, however, leave spite aside because it was not pleaded or cross-examined about so that the court would have heard the answers of the defendants about it.

33. The rule of pleading in r:68.3 that I have discussed above is nothing new in the law of defemation, the rule is meant to facilitate the law that fair comment, that is, fair opinion, must be based on facts – see – ***London Artists Ltd v Littler and other [1969] 2QB. 375*****,** in which an allegation of a plot without the fact that was true as the basis, was rejected as fair comment. In the present claims the facts that were true as the basis of the defence of fair comment were not even pleaded, so there would be no proof at trial, of any facts as the basis of fair

comment. The alternative defence of fair comment was plainly unsustainable right from the pleading, because the fact or facts on which it was based were not pleaded. The pleading of fair comment warranted the order that it be struck out.

34. The second reason for striking out the defence of fair comment was based on the application of the rules of law regarding fair comment to the statements pleaded to have been made as fair comment in these claims. The defendants pleaded that the entire editorial was, "fair comment and opinion… on a matter of public interest". Can all the statements meet the requirements of fair comment as a defence?

35. The general law is that; a statement made as a fair comment on a matter of public interest is a defence to a claim in defamation, provided it does not go beyond the limits of reasonable comment; and it must be noted that an occasion of fair comment is not an occasion of the defence of priviledge or qualified privilege. That was stated at the early stage of the development of the law on fair comment – see ***Marivale v Varson [1887] 20 QBD 275.*** Recently, especially in the judgment of Lord Nicholls, in the case of ***Tse Wai Chun Paul v***

***Albert Chung [2001] EMLR 777,*** it has been said that a number of conditions must obtain for a defence of fair comment to prevail. They are these. 1) The statement must be on a matter of public interest. 2) The statement must be based on facts which are true or protected by privilege. 3) The statement must be recognisable as a comment, as distinct from an imputation of fact. 4) The statement must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is made, the reader should be in a position to judge for himself how far the comment is well founded, and to form his own opinion. 5) The statement must be a comment made honestly and is reasonable and fair. 6) The statement must not be actuated by spite or malice. Newspapers are regular defendants in defamation cases, and usually plead fair comment as defence. Some of them may wish to note the above features of the defence of fair comment.

36. In ***Tse's Case,*** it was pleaded that the defendants made several defamatory statements in a radio talk-show, one of them was that the claimant, an attorney, did not properly advise his client to make a claim against his employer because of conflict of interests. The proposed claim against the employer was for damages for the

imprisonment of the employee abroad while on duty, a matter that attracted great public interest in Hong Kong. The defamation claim was determined based on malice which in the circumstances defeated the defence of fair comment.

37. There has been no issue in these two claims, that the editorial complained of was published, and about a matter of public interest. The difficulty was in the question of fair comment; specifically in identifying opinions as distinct from assertions of facts.

38. The words of the editorial, in my view, failed completely right from the pleading, to meet the requirements for a statement made as a fair comment. None of the statements in the editorial can be identified as opinion. The words were simply deliberate assertions in the nature of facts. The assertions were all untrue. The defendants did not plead that they were true or that some were true. The assertions were grossly injurious, and cannot be regarded as fair.

39. The defence of fair comment in the present claims compares worse than the same defence in the recent Supreme Court Action No. 376 of

2005, ***Said Musa v Anne Marie Williams and Another,*** in which the defendants at lest unsuccessfully tried to fit their version of the event within the true event. The pleaded defence of fair comment in each of the present claims was plainly untenable, right from the way it was pleaded. Reasonable ground for defending each claim, which ground would be reasonable opinion supported by a fact or facts, was not disclosed in the statement meant to plead fair comment. The insufficient pleading of fair comment warrants an order to strike it out.

40. The usual order that the court would make where a pleading is defective is the order that the pleading be amended, before the court considers an order to strike out. During the hearing of the application, the defendants did not ask for opportunity to amend the pleading of fair comment. The words complained of could be only generally true, not strictly true, to support the defence of fair comment, so it would be fairly easy to plead some truth. I have to infer that the defendants did not request permission to introduce an amendment pleading factual basis, because they knew that there were no truths in the words of the editorial whatsoever. The only possible thing was for them to plead that the entire editorial was opinion of the writer.

41. It is laudable to say that under the new Rules, courts must be concerned with substance other than technicalities. I do not think that extends to courts rewriting statements of case amending facts that must be proved by evidence, and which the court would, of course, have no knowledge and instruction about. Rule 26.3 has retained the power of the court to strike out a statement of case. That means that there still will be occasions on which courts will order statements of case struck out. In my respectful view, this is one such occasion.

42. ***The Final Determination based on the evidence.***

Had there been no late interlocutory application, the judgment of this court would have commenced at this point. It would have concentrated on whether on the evidence presented, the editorial had the defamatory meanings pleaded by the claimants, and the factual basis for the defence of fair comment. Time and effort would have been saved.

43. I commence the consideration as to whether the words of the editorial were defamatory, by recapping the accepted range of the words used in the definition of the wrong of defamation. Defamation is the

publication of untrue statement about another person, that is calculated to hold the person to hatred, contempt or ridicule – see the ***Capital and Counties Bank v Henty Case.*** Alternatively, it is the publication of untrue statement about another, that causes people to shun him, or that tends to lower his reputation in the estimation (or opinion) of right thinking (or reasonable) members of community – see ***Sim v Stretch [1936] 2 All E.R. 1236 (HL).*** See also ***Supreme Court Action No. 281 of 2003, Cedric Flowers v Kay L Menzies and Another.*** In assessing the meaning of the word complained of as defamatory, the natural and ordinary meaning of the word must be taken, as well as the surrounding circumstances. Examples are in, ***Gillick v BBC [1996] EMLR 267 and Skuse v Granada Television [1996] EMLR 278.***

44. The words complained of in these claims, together with the entire editorial must be assessed for their natural and ordinary meanings. The answer must then be provided as to whether those meanings caused the claimants to be held to hatred, contempt or ridicule, or would lower their reputations.

45. Almost all the words and sentences of the editorial speak for themselves. Their meanings are plain. They mean that each claimant was incompetent and mismanaged the company, he was dishonest and fraudulent; cruel and unconscionable towards staff; and that he generally sabotaged the operations of the bus company. It was my conclusion that all the defamatory meanings complained of were proved by each claimant.

46. Next I considered that the editorial was entitled; "Receivership incompetence", the crucial question I had to answer was: despite the title of the editorial and the reference to the receivership, would a reasonable person understand the editorial to have been published of Mr. Garcia, and of Mr. Flowers? I concluded that a reasonable person would conclude so. The words published of the claimants were about their reputations personally, and affected their reputations in the defamatory meanings attributed to them by the claimants.

47. I adjudge Mr. Andrew Steinhauer and The Belize Times Press Limited liable to Mr. Robert Garcia, and to Mr. John Flowers in defamation, for publishing the editorial in The Belize Times

Newspaper dated, 25.12.2005. The claimants are entitled to damages and costs of the proceedings.

48. ***Damages***

It is desirable to award the same or similar damages for wrongs in the same tort in the same jurisdiction, unless there are particular facts which warrant departure. Then over time higher damages may be awarded to take into account inflation. I have noted the damages awarded in the last two recent defamation cases in the Supreme Court. In ***SC No. 561 of 2006, Lois Young Barrow v Andrew Steinhauer and Belize Times Press Ltd,*** the same defendants as in this case, the claimant was awarded $30,000.00 damages, and $10,000.00 was allowed for costs. The claimant was an attorney, a professional. At the time she was engaged in an on-going public criticism of the Government, which was much publicised. In ***SC No. 376 of 2005, Said Musa v Ann Marie and Another,*** the claimant was awarded $25,000.00 damages, and costs of $10,000.00 was allowed. The claimant was the Prime Minister of Belize. The defendants were also editor and publishers of a newspaper. There must have been good reason for the $5,000.00 difference in the awards. Belize has not yet

adopted any special defence against a claim of defamation by public figures. Even a Prime Minister is entitled to protection of his reputation in the same way other people are. The American case, ***New York Times v Sullivan [1964] 376 US 254,*** is not applicable in Belize.

49. Although the defamatory words in these claims were more numerous and so far reaching in their sting so as to imply malice, I shall limit the award of damages to the same damages as in ***Lois Young Barrow's Case,*** because in the present claims there has been no evidence that the publication was repeated on another occasion, and malice was not made an issue. In ***Lois Young Barrow's Case,*** the publication was repeated but there were fewer defamatory statements.

50. Mr. Robert Garcia is awarded damages of $30,000.00, and allowed costs of $9,000.00. Mr. John Flowers is also awarded damages of $30,000.00 and allowed costs of $9,000.00. I have ordered a little lower sum for costs because the application for an order to strike out the statement of case of the defendants should not have been made so late, with the result that the trial was prolonged to that extent.

51. Had there been a claim for an order that the defendants publish retraction of the editorial, I would have granted the order.

52. Delivered this Friday the 7th Day of December, 2007
At the Supreme Court
Belize.

Sam Lungole Awich
Judge
Supreme Court of Belize