

IN THE SUPREME COURT OF Belize, A.D. 2007

CLAIM NO. 362 OF 2007

BETWEEN

(ARA MACAO DEVELOPMENT LIMITED  
(PAUL GOGUEN  
(

CLAIMANTS

(AND  
(

(PENINSULA CITIZENS  
(FOR SUSTAINABLE DEVELOPMENT  
(MARY TOY

DEFENDANTS

BEFORE: Conteh, C.J.

**APPEARANCES:**

Dr. Elson Kaseke for the Claimants

Mr. Oscar Sabido SC for the Respondents.

**J U D G M E N T**

1. This claim for defamation has been brought by the two Claimants, Ara Macao Development Limited and Mr. Paul Goguen, against Peninsula Citizens for Sustainable Development and Mary Toy as defendants.
2. The Claimants claim that in two publications by the defendants they were defamed, in particular, in the publication "*A Reality Check For Ara Macao.*" That the words in that article published on the web site

of the defendants:

- That the Ara Macao project was *"ill conceived from the out set"*.
- That the developer of the Ara Macau Project was *"attempting to set village against village and to drive a wedge among people now living harmoniously on the Placencia Peninsula"*.
- That the Ara Macau project was *"not carefully planned"* and did not *"substantively address environmental or economic issues"*.
- That *"representatives of Ara Macau either glossed over or dismiss community concerns and attempt to divert attention from the serious flaws in their development plans by promising golden dreams of prosperity and plenty"*.
- That, in addition to the above alleged defamatory statements, the further statement that: *"we have more to say to Mr. Goguen. We can only hope he - and Belize is listening"*, are all in the context of the publication as a whole, defamatory.

3. The Claimants also claim that the second publication by the defendants on their web site entitled "*Setting The Record Straight - From the Peninsula Perspective*", contained the following defamatory words and statements:

- That the Second Claimant was a liar who was staging a "*media show*" and a "*media circus*" on behalf of the First Claimant in order to lie and convince people to support the Ara Macao project.

4. The background to this claim is the Ara Macao Project itself, which it is common ground between the parties, is a massive and substantial development which hopes, if and when it is completed to, among other things, construct a marina with various slips; a 260 room hotel; 456 various condominium homes along the seafront, 296 villa homes around the marina; a 410,000 sq. ft. commercial center; a casino and an 18 hole golf course, all located in the Stann Creek District, just north of the Placencia Peninsula and south of Riversdale Village. Undoubtedly, this is a massive development, not only for the Placencia Peninsula but for the country of Belize as a whole. Of



course, such developments when taken in tandem with environmental, economic and other social concerns, must be welcome as they may hold the potential to improve the life of every Belizean.

5. The first claimant as its title implies and the second claimant, Mr. Paul Goguen, are the developers of this proposed project. The first defendant is a not-for-profit organization comprising of residents of the Placencia Peninsula and others whose objective is to marry development projects with environmental concerns and sensitivity; and the second defendant, Mary Toy, is a member of the first defendant and possibly one of its moving spirits.
  
4. During the hearing the case was beginning to become convoluted, when the court drew the attention of the learned attorneys, Dr. Elson Kaseke for the claimants and Mr. Oscar Sabido SC for the defendants to the salutary provision in my view, of Part 68 rule 4 of the Supreme Court Rules of Procedure. Order 68 rule 4 provides for the court to determine whether or not words complained of in a defamatory claim are capable of bearing a meaning or meanings

attributed to them in the statement of case and provides as follows:

*"68.4(1) At any time after the service of the statement of claim, either party may apply to a judge sitting 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.*

*(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just."*

Both counsel agreed to make this application and this is my judgment in light of that application.

5. The tort of defamation is concerned with the protection of reputation. A man or a woman should not be thought less of or ill by his neighbours and peers because of the unwarranted publication by a



defendant. The common law of defamation, as Dr. Kaseke helpfully pointed out to the court, set out in the cases he referred to, ***Lewis v The Daily Telegraph [1963] 2 All E.R. 151***; ***The Capital and County Bank Limited v George Henty & Sons [1882] 7 A.C. 741***; ***United Printers Limited v Bernard and Others [1967] 11 W.I.R. 271***; and the Guyanese case of ***Janet Jagan and Another v. Linden Forbes Sampson Burnham [1973], 20 W.I.R.***, all attest to the fact that the test for defamation is whether the publication complained of is capable in the eyes of the ordinary man or woman to lower the claimant in the esteem of right thinking members of society.

6. I have had the benefit of reading the two publications as a whole and in particular the sections the claimants take issue with. In my view, I do not think they bear the meanings contended for by the Claimants. They certainly may not be friendly or even welcoming of the Ara Macao project itself, but they are views held by the defendants of the project. The comments do not, in my view, in any way, reflect ill on the Claimants or indeed the reputation of Mr. Goguen himself. Only a heightened sensitivity would read in between the lines of the publications to find that they are truly defamatory. The project itself

because of its nature and size has evidently attracted publicity, both radio and television; and the defendants have, as it were, tried to put their own case against the project in their publications in their web sites. Some strong views perhaps, and strongly put, but they do not, in my view, rise to the level of defamation. One is entitled to hold strong views and even strongly to express them. I therefore rule that the publications as a whole and read in context and in the setting of the development on the Placencia Peninsula are not capable of bearing the defamatory meanings sought to be contended for by the Claimant. I therefore rule that there is no defamation in the publications.

7. The counterclaim of the defendant is equally dismissed as the words complained of do not, in my view, bear a defamatory meaning.
8. Each side to bear its own costs.

DATED this 6<sup>th</sup> day of May, 2008.

  
A. O. CONTEH