

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CIV-2016-409-000309
[2021] NZHC 1308**

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|---------|--|
| BETWEEN | BRYAN DOUGLAS STAPLES First Plaintiff |
| AND | CLAIMS RESOLUTION SERVICE LIMITED Second Plaintiff |
| AND | RICHARD LOGAN FREEMAN First Defendant |
| AND | MEDIAWORKS TV LIMITED Second Defendant |
| AND | KATE MCCALLUM Third Defendant |
| AND | TRISTRAM CLAYTON Fourth Defendant |

Hearing: 23 March 2021

Appearances: P A Morten for Plaintiffs
No appearance for Defendants

Judgment: 4 June 2021

Reissued: 14 November 2022

JUDGMENT OF DOOGUE J

This judgment was issued by me on 4 June 2021 at 12.30 pm pursuant to Rule 11.5
of the High Court Rules

Registrar/Deputy Registrar
Date:

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Overview

[1] Mr Bryan Staples, the first plaintiff in the proceedings, and his company Claims Resolution Services Ltd (CRS), the second plaintiff, provide assistance to homeowners with unresolved Earthquake Commission (EQC) and insurance claims for damage caused by the Canterbury earthquake sequence. These proceedings involve a claim that the defendants defamed Mr Staples and CRS when they made allegations of fraudulent and illegitimate practices by Mr Staples and CRS.

[2] The second defendant is Mediaworks TV Ltd (Mediaworks). The third is Kate McCallum, a television producer. The fourth defendant is Tristram Clayton, a journalist. Both the third and fourth defendants were employed by Mediaworks at all relevant times. For convenience all three are referred to as Mediaworks.

[3] This application concerns only the first defendant, Mr Richard Logan Freeman (Mr Freeman). Mr Freeman has failed to file a statement of defence to the claims made against him, so this claim proceeded by way of formal proof.

[4] The Court's role is to establish whether Mr Staples has established the elements of his claim and, if he has, to consider the issue of remedies. The standard to which I am required to be satisfied on the plaintiff's evidence "is much the same as it would be if the proceeding had gone to trial".¹ The applicable standard of proof is therefore the balance of probabilities. In this formal proof setting I am not required to consider hypothetical affirmative defences.²

[5] If I am persuaded the elements of the claim are proven Mr Freeman will be liable for defamation. I would then assess Mr Staples' claims for:

- (a) general damages (including aggravated damages);
- (b) punitive damages;
- (c) interest; and

¹ *Ferreira v Stockinger* [2015] NZHC 2916 at [35].

² *Booth v Poplar Road Farms Ltd* [2019] NZHC 807.

- (d) costs and disbursements.

Background

[6] Mr Staples formed CRS in August 2012. The company was designed to address a perceived need for advocacy services against EQC and insurers. Homeowners who wanted to challenge EQC or their insurer needed resources to engage lawyers and experts to provide a professional basis for that challenge. CRS provided loss/damage assessment services independent of both EQC and insurers on a “no win, no pay” basis.

[7] When a client first met with CRS they were provided an initial damage assessment report (IDA). The IDA consisted of a global damage assessment and a costed scope of works. This enabled the client to determine whether their EQC/insurance loss assessment was fair and accurate. IDAs were produced by contracted builders or in-house engineers and consultants. Some residents obtained an IDA from CRS and then went back to EQC or their insurer themselves, but many continued with CRS.

[8] Those who chose to retain CRS’s services signed a contract with CRS. CRS undertook to fund the resolution of claims on behalf of clients, and clients were given access to the necessary resources to resolve their claim. The cost of those resources was deferred until the end of the process, with CRS taking a share of any settlement proceeds. At this point CRS would contact the insurer and EQC on behalf of the client to obtain a settlement proposal. However, offers obtained at this stage were frequently seen as unfair and consequently rejected.

[9] Mr Staples says litigation was generally the only way to progress a claim further. This forced EQC to engage the experts necessary to make decisions around settlement. In his words, he “cannot overstate how difficult it was to deal with these organisations and how committed they were to under-settling claims”.

[10] To facilitate litigation CRS generally recommended the client use one of several affiliated lawyers. From that point CRS would hand over all documentation to the lawyer and take a backseat role. Their services at this point were generally

limited to funding, usually to obtain the services of expert witnesses. Few cases proceeded to trial and many clients received settlements in excess of what had been previously offered to them.

[11] In 2013 Malcolm Gibson (Mr Gibson) was employed by CRS. He claimed to be a highly qualified quantity surveyor. That was not true. Mr Staples discovered this and requested Mr Gibson instruct a suitably qualified quantity surveyor to sign off the work he had done. Mr Gibson refused. Consequently, CRS did not pay outstanding fees of approximately \$170,000 owed to Mr Gibson's company as the work he had done had no commercial value.

[12] Mr Gibson's response was to assign the alleged debt for \$1 to Ironclad Securities Ltd (Ironclad) on 7 March 2014.

[13] On the morning of 11 March 2014 two intimidating men arrived at Mr Staples' home to serve him with "debt acquisition documents". They required him to pay the \$170,000 within seven days and said they would kill him if he did not comply.

[14] At this stage Mr Staples had a high public profile. He was regularly interviewed by the media and had gained a reputation as someone who was providing access to justice for people who had been neglected by EQC and insurers.

[15] On 10 April 2014 Mr Staples discovered the following posts on Ironclad's Facebook page that mentioned him by name. He argues they are defamatory.

The posts

[16] Posted on 8 April 2014:

Another day..... Here we are serving D88 debt documents to one of the countries most *well known Conmen* and the boys in blue turn up (to support them and issue trespass orders as they don't like us serving them debt documents) Keep reading and you will see.

Not only has this clown and his corrupt business partner *ripped off a client for \$170,000 over 181 invoices* that are not disputed and fully audited he has had articles written about him in main stream media warning them of his background. Top blogger Whale Oil has also exposed them. These two have had *over 24 companies struck off the NZ Companies register and more debt*

showing up daily. They are professional conmen that manipulate police, media, lawyers and loop holes to continue to rip Innocent people off. We have another \$50k debt reported on them too.

If you know of any *other debt or dodgy dealings* of the following *Conmen*, please come forward as they need stopped before more people are burnt!!

Victor Cattamole of Trade A Home Ltd (Google search this one.....he's something else)

Brian Staples of Earthquake Services Ltd

They have even broken the law by *unknowingly taping a NZ Police officer* and attempting to use it as leverage (highly illegal). Made false statements and continue to hide behind loop holes.

Message us with any details as they are doing their usual. Crying foul to hide their debts.....

(emphasis added)

[17] Posted on 9 April 2014:

The infamous Victor Cattamole (Google search this man) and Bryan Staples of Trade A Home Ltd and Earthquake Services Ltd.

These men *have over 24 companies struck off the companies Register* and have had articles written about them!!!

We have uncovered over *\$300,000 of debt* so far where these *Conmen* have *ripped innocent people off!*

The pattern is always the same. Staples uses his media whistle blowing lime light as a weapon against unassuming creditors while Cattamole makes up stories. They essentially *bully and threaten good people* out of their debt.....

These two are the worst case we have seen and we are uncovering more daily!!!!!!

If you have been *ripped off* by these two clowns PM us, **THEY MUST BE STOPPED!!!!!!**

Batter up "boys" Ironclad doesn't get bullied!!

Help us stop these men doing this to others!!!!!!

Follow our page for more updates and *Conmen* we will be exposing!!

We have another big name going to the chopping block as well.....

Some debt is plain bad luck but some is calculated and managed..... That's who we go after.....

“You know you owe”

(emphasis added)

[18] And on 10 April 2014:

Further information sort on these two “businessmen”

The infamous Victor Cattamole (Google search these men..... Unbelievable read) and his business partner Bryan Staples.

Bryan owns Earthquake Services Ltd or EQS (funny how close that is to EQC)

They both own Trade A Home Ltd’s as well.

We now have reported *debt of over \$300,000.00* and growing.

Both have interesting pasts to say the least.....

Unfortunately for you guys we don’t scare or bully.

We know for a fact that both these fine upstanding men are watching our page and making complaints. Booohooooo

Perhaps you actually address the \$200,000.00 debt we are persuing rather than hiding and *making false complaints*.

Also sending emails of tape recordings around town.

We have a growing list of people coming forward now and want to hear from anyone else these two men owe money to.

Seriously people Google search these two.....

Bryan loves to *threaten media* etc..... After his EQC minute in the sun and Victor..... Well what to say.....

We are happy to go public and expose everything we know.

Help us chch and come forward with the others who have been on the wrong end of these guys.

We have more each day.

Share this post and like our page

(emphasis added)

[19] These posts were shared by other individuals, and Ironclad posted comments making similar statements. Mr Staples fielded calls from clients who had seen the posts and were concerned about what they had read.

[20] Mr Staples issued defamation proceedings against Ironclad and its associates and sought an interim injunction. On 15 April 2014, District Court Judge Kellar granted a without notice application for interim injunction on the following terms:

- (1) That the first respondent, IRONCLAD SECURITIES LIMITED, and the second respondents, LYNDON VAUGHAN RICHARDSON, JOSEPH DENNIS ROBERT SMITH and KANE ARANA SMITH, immediately remove all statements and material in any way related to the applicant and his associated companies from the webpage on Facebook operated by the first and second respondents at the internet address www.facebook.com/ironcladsecurities
- (2) That the first and second respondents or their employees or associates are hereby restrained from publicising any information in any way relating to this proceeding pending further order of the Court.

[21] Mr Freeman filed a statement of defence on behalf of Ironclad and the other respondents who were listed as directors of the company. They acknowledged making the statements and argued a defence of “truth”. As part of the statement of defence Mr Freeman provided an affidavit where he elaborated on his attack against Mr Staples. He acknowledged making the statements and relied on the defence of truth. Affidavits were also provided by Mr Bevan Craig, Mr Michel Pearl and Mr David Wilson.

[22] From this Mr Staples learnt that Mr Freeman was the manager of Ironclad and the administrator of the Facebook page. He successfully applied to have Mr Freeman joined to the proceedings as a defendant on 11 June 2014.

[23] In August 2015 Mr Staples sought and obtained restraining orders against Mr Freeman under the Harassment Act 1997.³ Mr Freeman appeared to have developed a grievance against Mr Staples. Ironclad appeared to be little more than “enforcers”. Neither Mr Freeman nor Ironclad attempted at any stage to refer the debt to the appropriate judicial body. Instead, Mr Staples alleges Mr Freeman sent

³ *Staples v Freeman* [2015] NZDC 14797.

threatening messages, told Mr Staples he had placed vehicle trackers on his vehicle and threatened him at work. As District Court Judge Neave said:⁴

Heavy handed attempts to try and extract payment of a sum which is in dispute and has never been the subject of judicial determination must be deprecated in the strongest terms.

Issues for determination

[24] The issues for determination in this case are whether Mr Staples has established that:

- (a) a defamatory statement has been made about him; and
- (b) the statement was published by Mr Freeman.

[25] The first part of the claim is in respect of the Facebook posts of Ironclad.

[26] The second part of the claim is in respect of documents filed by Mr Freeman in the injunction proceedings. The documents were the statement of defence and the affidavits of Mr Freeman, Mr Pearl, Mr Craig and Mr Wilson (the District Court documents).

[27] It is immaterial that the statements in Mr Pearl, Mr Craig and Mr Wilson's affidavits were not made by Mr Freeman. As Lord Denning put it:⁵

Our English law does not love tale-bearers. If the report or rumour was true, let him justify it. If it was not true, he ought not to have repeated it or aided its circulation. He must answer for it just as if he had started it himself.

Evidence on behalf of Mr Staples

[28] Affidavits were filed in support of Mr Staples' claim.

[29] In his first affidavit Mr Staples sets out the background already included in this judgment. He also filed a brief supplementary affidavit that clarifies certain matters from his earlier affidavit. Mr Staples provided almost all the supporting evidence

⁴ *Staples v Freeman*, above n 3, at [24].

⁵ *Dingle v Associated Newspapers Ltd* [1964] AC 371 (HL) at 410-411.

I refer to, including copies of the District Court documents. Several weeks after the hearing I asked Mr Staples to file a third affidavit clarifying the harm caused to him by each publication. He did so.

[30] Hong Mei Staples (Mrs Staples), Mr Staples' wife, provided an affidavit corroborating Mr Staples' account of the "biker thugs" threatening them and providing evidence of the effects of the alleged defamation on Mr Staples.

[31] Cheryl Lauren McLeish (Ms McLeish), a client advocate for CRS, deposes CRS suffered an immediate loss of clients after the Campbell Live programmes aired. Specifically, Ms McLeish says "we were heroes before the programme but after it we were dirt".

[32] Jai Moss (Mr Moss), barrister, deposes he acted for Mr Staples and CRS until 2019. Specifically, he obtained the interim injunction and restraining order on behalf of Mr Staples. He says he met with Mr Freeman multiple times and exhibits two file notes from these meetings.

[33] Lisle John Hood (Mr Hood), Christchurch property investor, says Mr Staples and CRS helped him and his sister secure settlements they never would have achieved on their own. Mr Hood also discussed the impact of the second Campbell Live programme on Mr Staples and CRS. He said people who previously admired Mr Staples were now "permanently turned off".

Were defamatory statements made about Mr Staples?

[34] Mr Staples must prove, in relation to each claim, that defamatory statements were made about him.

[35] In *Craig v Slater*, the Court of Appeal said:⁶

[15] For a statement to bear a (defamatory) meaning alleged, two fundamental pre-conditions must be met. First, it must be the meaning an ordinary, reasonable person would draw or infer from the words, taken in their context and in light of generally known facts. Secondly, that meaning must be pleaded.

⁶ *Craig v Slater* [2020] NZCA 305 (footnotes omitted).

[16] Whether a statement is capable of bearing a particular meaning is a question of law; whether it in fact conveys that meaning is a question of fact.
...

[36] The meaning of a statement is interpreted from the perspective of an objective reasonable person. The reasonable person is:⁷

... fair-minded, not avid for scandal, not unduly suspicious, nor one prone to fasten on to one derogatory meaning when other innocent or at least less serious meanings could apply.

[37] No specific definition of defamation is contained in statute, instead the matter is left to the courts.

[38] The following four definitions of a defamatory statement have achieved “fairly common currency” across common law jurisdictions:⁸

- (a) a statement which may tend to lower the plaintiff in the estimation of right-thinking members of society generally;⁹
- (b) a false statement about a person to his or her discredit;¹⁰
- (c) a publication without justification which is calculated to injure the reputation of another by exposing him or her to hatred, contempt or ridicule;¹¹ and
- (d) a statement about a person which tends to make others shun or avoid him or her.¹²

[39] In general, a defamatory statement tends to affect the claimant’s reputation adversely and in a more than minor way.¹³

⁷ *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 630.

⁸ Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at 846-847.

⁹ *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240.

¹⁰ *Youssouf v Metro-Goldwyn-Mayer* (1934) 50 TLR 581 (CA) at 584.

¹¹ *Parmiter v Coupland* (1840) 151 ER 340 (Exch) at 342.

¹² *Youssouf v Metro-Goldwyn-Mayer*, above n 10, at 587.

¹³ *Craig v Slater*, above n 6, at [44]-[45].

The Facebook posts

[40] The Facebook posts, in their natural and ordinary meaning, state that Mr Staples:

- (a) is a conman;
- (b) rips off innocent people, his clients;
- (c) owes an undisputed debt of \$170,000;
- (d) illegally taped a police officer;
- (e) with Mr Victor Cattermole has had over 24 companies struck off;
- (f) owes \$300,000 in debt;
- (g) bullies and threatens good people;
- (h) is making false complaints; and
- (i) threatens media.

[41] These statements contained in the Facebook posts clearly amount to an attack on Mr Staples' character that, if taken as true, would adversely affect his reputation with right-thinking members of the public. I therefore find the Facebook posts were defamatory of Mr Staples.

The District Court documents

[42] The statement of defence in the injunction proceedings at paragraph four makes the following allegations:

- 4. We say:
 - (a) The plaintiff is corrupt and a thief;

- (b) The plaintiff has an unpaid debt and undisputed debt of over \$170,000.00;
- (c) The plaintiff and his associate Mr Victor Cattermole together have over 24 companies struck off;
- (d) The plaintiff is a fraudster and a conman;
- (e) The plaintiff is in business with Mr Victor Cattermole;
- (f) The plaintiff has committed an unlawful act;
- (g) The plaintiff has defrauded members of the public.

[43] Aside from (e), these allegations are defamatory in their natural and ordinary meaning.

[44] Further, the statement of defence records the defamatory statements contained in the Facebook posts and pleads they are true. A fair-minded and objective reasonable person would see this as a restatement of the allegations contained in the Facebook posts. If they bore a defamatory meaning, as they did, then implicitly restating them is similarly defamatory. I therefore find the statement of defence contained defamatory statements.

[45] In his affidavit Mr Freeman similarly restated the defamatory statements contained in the Facebook posts and pleaded they were true. For the same reason as for the statement of defence I find this was defamatory.

[46] Mr Freeman also alleges Mr Staples uses unqualified assessors; has failed to pay subcontractors; has failed to pay the Inland Revenue Department (IRD) for PAYE tax for over 11 months; has failed to pay Filipino workers; has failed to pay rent; and generally accrues debt he has no intention of paying as common business practice.

[47] Similar allegations are repeated in the affidavits of Mr Craig, Mr Pearl and Mr Wilson.

[48] Mr Craig accuses Mr Staples of questionable business practices; failure to pay rent; fraudulent alternation of a loan agreement; conning business colleagues; and involvement in a fraudulent re-dating of a mortgage document in Australia.

[49] Mr Pearl accuses Mr Staples of fraudulent withdrawal of funds from a bank account; theft; employing people with no experience in the building industry to carry out earthquake reports; employing staff with serious criminal convictions; failure to pay subcontractors; deceitful business practices and doctoring of invoices; non-payment of tax, rent and employees' wages (especially to Filipino immigrants); exploitation of Filipino workers, including bringing them to New Zealand to work as sex workers; money laundering; being a conman; making unauthorised transactions as a shareholder; and lying to the Disputes Tribunal.

[50] Mr Wilson accuses Mr Staples of improper business practices; responsibility for non-payment of wages to Filipino workers; non-payment of tax; money laundering; a business practice of not paying bills; unauthorised private use of company bank accounts; using untrained labour for painting and house repair; exploitation of Filipino workers, including bringing them to New Zealand to work in brothels; and theft.

[51] These allegations, if taken as true, would clearly bring Mr Staples into disrepute in the eyes of right-thinking members of the public. They represent a sustained and comprehensive attack on Mr Staples' character and business practices. They would negatively affect Mr Staples' reputation in the eyes of an objective reasonable person in a more than trivial or minor way.

[52] Mr Staples does not need to prove that the statements are false to sustain a cause of action, he merely needs to show they are defamatory. Truth is, however, an affirmative defence to a claim of defamation.

[53] I find the statements contained in the District Court documents are defamatory of Mr Staples.

Did Mr Freeman publish the statements?

[54] I now consider whether Mr Freeman published the defamatory statements or not.

The Facebook posts

[55] This issue is relatively non-contentious. Mr Freeman has admitted to administering the Ironclad Facebook page. Each Facebook post was viewed, liked, commented on and shared by members of the public. It is implicit in this admission and his evidence in the District Court documents that he made the relevant posts. I therefore find on the balance of probabilities that it is more likely than not that Mr Freeman published the Facebook posts.

The District Court documents

[56] Similarly, the statements made in the District Court documents were published by Mr Freeman. However, in respect of this publication, I must consider the defence of absolute privilege.

Defences

Absolute privilege

[57] Section 14(1) of the Defamation Act 1992 provides that:

- (1) Subject to any provision to the contrary in any other enactment, in any proceedings before—
 - (a) a tribunal or authority that is established by or pursuant to any enactment and that has power to compel the attendance of witnesses; or
 - ...anything said, written, or done in those proceedings by a member of the tribunal or authority, or by a party, representative, or witness, is protected by absolute privilege.

[58] This privilege includes pleadings and documents from the inception of the proceedings, briefs of evidence, affidavits and statements made during interviews with potential witnesses.¹⁴ The rule is founded on the policy that witnesses should be able to “give their testimony free from any fear of being harassed by an action of an

¹⁴ *Rawlinson v Oliver* [1995] 3 NZLR 62 (CA).

allegation, whether true or false, that they acted from malice”.¹⁵ However, that principle must be balanced against the need to provide a remedy to a citizen who has their good name and reputation attacked by a maliciously reproduced falsehood.

[59] The District Court of New Zealand is a court of record established by the District Court Act 2016.¹⁶ It has the power to compel the attendance of witnesses and it is an offence to fail to appear after a summons without reasonable excuse.¹⁷ A statement of defence and accompanying affidavit evidence filed in the District Court is something written in proceedings by a party or witness. The District Court documents are, therefore, protected by absolute privilege. On that basis, to the extent the claim relies on these documents as a separate publication warranting damages for defamation, the claim must fail.

Remedies

[60] As Mr Staples has made out the elements of his claim in respect of the Facebook posts, I must now assess the remedies he is entitled to. Mr Staples seeks:

- (a) a declaration that Mr Freeman is liable to him in defamation;
- (b) general damages of \$350,000, including aggravated damages;
- (c) punitive damages of \$10,000;
- (d) interest from the date of the cause of action; and
- (e) costs.

Declaration

[61] I declare Mr Freeman is liable to Mr Staples in defamation pursuant to s 24 of the Defamation Act.

¹⁵ *Teletax Consultants Ltd v Williams* [1989] 1 NZLR 698 (CA) at 701, citing *Trapp v Machie* [1979] 1 WLR 377 (HL) at 379.

¹⁶ District Court Act 2016, s 7.

¹⁷ District Court Act, s 102; and District Court Rules 2014, r 9.43.

Damages

[62] General damages in defamation are directed towards the injury sustained as a result of the damage to the plaintiff's reputation.¹⁸

[63] The task of this Court is to assess the Facebook posts in light of the gravity of the defamation, the extent of the publication, the harm suffered by Mr Staples and whether there were any aggravating features justifying an award of aggravated damages.¹⁹

[64] Awarding damages is always difficult when the harm is to reputation. The ordinary principle is that damages should restore the plaintiff to the position they were in before the defamation occurred.²⁰

[65] Money cannot restore reputation and the courts must embark upon the convoluted task of determining what a defamatory statement is "worth".²¹ To a large extent, the purpose of awarding money is to vindicate the defendant in the eyes of the public.²² In that sense a symbolic element exists alongside the compensatory.

[66] In *John v MGN Ltd* the principles relating to compensatory damages in defamation were set out as follows:²³

The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the

¹⁸ *Karam v Parker* [2014] NZHC 737 at [225].

¹⁹ *Solomon v Prater* [2021] NZHC 481 at [103], citing *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [31].

²⁰ *Solomon v Prater*, above n 19, at [99].

²¹ Stephen Todd, above n 8, at 886.

²² *Cassell & Co Ltd v Broome* [1972] AC 1027 (HL) at 1070-1071.

²³ *John v MGN Ltd* [1997] QB 586 (CA) at 607, adopted in *Williams v Craig*, above n 19, at [31]; and *Television New Zealand Ltd v Quinn* [1996] 3 NZLR 24 (CA) at 33-38.

truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place.

The gravity of the defamation

[67] Mr Morten submitted the Facebook posts make serious allegations at the high end of the gravity of defamation. He submitted the Facebook posts constituted a full-scale assault on Mr Staples' reputation.

[68] I agree with Mr Morten's submissions. The Facebook posts, in their natural and ordinary meaning, left few aspects of Mr Staples' reputation unsullied. He had a significant and positive public reputation which was called into question by the posts, as evidenced by the number of clients who called Mr Staples, concerned about what they had read online.

[69] Mr Freeman was financially motivated to defame Mr Staples. The Facebook posts appeared to further an extortion attempt against him. As part of his extortion attempt, Mr Freeman sent Mr Staples offensive emails and threats resulting in the restraining order made by Judge Neave in August 2015. Mr Freeman has not publicly recanted his allegations.

The extent of the publication

[70] The extent of circulation of the defamatory statement is relevant to damages in defamation as "[t]he greater the circulation the higher the damages tend to be".²⁴ Still, the courts have recognised that limited publication can be extremely damaging.²⁵ It is open to the Court to infer a degree of publication where a website, or as here a public page, is generally accessible.²⁶

[71] In this case, the posts at issue were made between 8 and 10 April 2014. The District Court issued an interim injunction on 15 April 2014 requiring the posts be

²⁴ *Court v Aitken* [2006] NZAR 619 (HC) at [40].

²⁵ *Court v Aitken*, above n 24, at [40].

²⁶ Ursula Cheer *Burrows & Cheer Media Law in New Zealand* (8th ed, LexisNexis, Wellington, 2021) at 70, citing *Al Amoudi v Brisard* [2006] EWHC 1062, [2007] 1 WLR 113 at [35].

taken down.²⁷ The posts were made to a public Facebook page that was liked by some 400 Facebook users. Each post was viewed, liked, commented on and shared by members of the public. This Court has also heard evidence from Mr Staples that he was contacted by a number of his clients who had seen the posts and were concerned. Beyond that, it is difficult to determine how many people viewed the posts.

[72] Clark J, in *Solomon v Prater*, referred to the following passage from the English case of *Dhir v Saddler*:²⁸

55. In my judgment, the authorities demonstrate that it is the *quality* of the publisheses not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publications. What matters is not the extent of publication, but to whom the words are published. ...

[73] Therefore, my assessment of the extent of publication is not merely a numerical exercise. I must consider the effect and importance of the publication to the people to whom it was published and on Mr Staples.

[74] In *Lee v Lee*, the defendant wrote a defamatory article that was published in a weekly Korean language newspaper.²⁹ It had a print run of 3,000 copies, was published online and targeted at the Korean community. The plaintiff was a senior member of the Korean community and the article defamed him primarily in relation to his actions as part of that group. Although the article received limited circulation outside the community, it caused substantial harm to him within it.

[75] In *Solomon v Prater*, the defendant wrote a letter containing defamatory statements about Mr Solomon.³⁰ It was distributed to a confined Mori community with a limited number of recipients. However, as in *Lee*, Mr Solomon was a senior figure within that community, so the publication caused him substantial harm.

[76] In *Karam v Parker*, the first defendant was the administrator of a Facebook page and creator of a website on which he and third parties posted defamatory

²⁷ *Staples v Ironclad Securities Ltd* DC Christchurch CIV-2014-009-762, 15 April 2014 [Minute of Judge Kellar].

²⁸ *Solomon v Prater*, above n 19, at [111], citing *Dhir v Saddler* [2017] EWHC 3155 (QB) (emphasis in original).

²⁹ *Lee v Lee* [2018] NZHC 3136.

³⁰ *Solomon v Prater*, above n 19.

comments.³¹ The defendant took special steps, including an interview with a newspaper, to raise the profile of the Facebook page and the website, which seriously exacerbated the damage done.

[77] *Hunter v Ross* concerned a defamation claim in respect of statements made about two lawyers by their former client alleging dishonesty, laziness and incompetency that were published to the defendant's website.³² The website was estimated to have around 1,000 unique views per day, and the defamatory statements were live for approximately five days.

[78] Here, the extent of the publication was most similar to that in *Lee* and *Hunter*. As in *Lee*, Mr Staples had a strong profile in the relevant community, in this case the community of Canterbury. Based on the evidence available, it seems likely that the number of unique viewers of the Facebook posts would be comparable to these cases.

The harm suffered by Mr Staples

[79] Mr Staples initially deposed the publication of the defamatory statements was extremely damaging to his reputation but gave insufficient information to the Court about that. I issued a minute requesting Mr Staples provide a further affidavit detailing his personal feelings on the harm caused by each publication.

[80] Mr Staples said this is "perhaps the most difficult thing that has ever been asked of [him]". He refers to his background as a private investigator and says the skill he held paramount was his ability to compartmentalise and sequester his feelings.

[81] Mr Staples says when he first arrived in Christchurch after the September 2010 earthquake to work for EQC he was faced with a confused and chaotic organisation. He says he was viewed as an outsider and recalls it was a bullying environment. However, he says this did not shake his determination to do a good job.

[82] He says when his letters to the high command of EQC about ineptitude at the organisation fell on deaf ears he set up his own business to offer better access to justice

³¹ *Karam v Parker*, above n 18.

³² *Hunter v Ross* [2019] NZHC 2489.

for homeowners. He felt under enormous pressure from the Government, EQC and insurers but that did not dissuade him from what he saw as “the good fight”. He says his customers were largely forgotten by these organisations.

[83] This background is important because it sets out the pride Mr Staples had in his professionalism and integrity. This integrity should have been free from unsubstantiated attack.³³

[84] Mr Staples says everything changed when Mr Freeman and his “Headhunter henchmen” entered his life. Mr Freeman’s campaign against him affected his family, reputation and mental health. Mr Staples says he was ill-equipped to deal with the co-ordinated attacks against him and that they were different from anything he had experienced before. He describes five distinct episodes of harm and, in some cases, trauma.

[85] Mrs Staples gave evidence that Mr Staples became an insomniac and was prescribed with antidepressant medication.

[86] It is clear that the posts were of significant enough concern to Mr Staples at the time to motivate him to commence defamation proceedings in the District Court. I have no reason to doubt his evidence and that of his wife that the posts were extremely damaging to both his personal reputation and the reputation of his business.

[87] The impairment of one’s relations with others can interfere in quite unpredictable and unforeseen ways with the enjoyment of life.³⁴

[88] There are two tempering factors in this case. The first is that much of the evidence relating to the emotional harm suffered by Mr Staples was caused subsequent to the effect of the Facebook posts rather than what can be identified and sheeted home to the Facebook posts themselves. The second is that there is extremely limited evidence relating to whether CRS suffered any tangible losses by virtue of the Facebook posts in isolation.

³³ *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361 at [87].

³⁴ *Siemer v Stiassny*, above n 33, at [48].

Aggravated damages

[89] Aggravated damages are awarded when the harm caused by the defamation is exacerbated by the manner in which the defendant defamed the plaintiff or the defendant's subsequent conduct.³⁵ The Court of Appeal in *Siemer v Stiassny* found that the best approach is to award an overall sum for general damages without particularising the portion of that sum accruing as a consequence of the defendant's aggravating conduct.³⁶ That is the approach I adopt here.

[90] I consider the following aggravating factors which, if considered separately, would justify a large award of aggravated damages:

- (a) Mr Freeman was financially motivated to defame Mr Staples — the Facebook posts appeared to further an extortion attempt against him;
- (b) as part of his extortion attempt, Mr Freeman sent offensive emails and made threats against Mr Staples, which resulted in the restraining order made by Judge Neave in August 2015;³⁷ and
- (c) Mr Freeman advanced the defence of truth at both sets of District Court proceedings and has not publicly recanted his allegations.

[91] I consider all these factors in assessing the appropriate global award of damages.

Overall assessment

[92] Damages in defamation proceedings are always fact-specific, but it is useful to refer to comparable cases.³⁸ In light of the extent of the publication and the harm that can reasonably be attributed to the Facebook posts in isolation, there are two useful comparators — *Hunter v Ross* and *Lee v Lee*.³⁹

³⁵ See *Siemer v Stiassny*, above n 33, at [51].

³⁶ At [73].

³⁷ *Staples v Freeman*, above n 3.

³⁸ *Solomon v Prater*, above n 19, at [126]; and *Karam v Parker*, above n 18, at [234].

³⁹ *Hunter v Ross*, above n 32; and *Lee v Lee*, above n 29.

[93] *Hunter v Ross* concerned a defamation claim in respect of statements made about two lawyers by their former client alleging dishonesty, laziness and incompetency that were published to the defendant's website. The website was estimated to have around 1,000 unique views per day. The statements were live on the website for approximately five days. The material was plainly defamatory and designed to injure the plaintiffs in their professional reputation. The High Court upheld the award by the District Court of overall damages of \$50,000 to the first plaintiff and \$34,000 to the second plaintiff, recognising additional defamatory comments made in respect of the first plaintiff.

[94] The evidence here is that some 400 people liked the page at the time the posts were made and that the posts were shared by other users before they were taken down. The gravity of the allegations here is arguably more serious than in *Hunter v Ross* as the posts allege criminal and intentional conduct rather than incompetence.

[95] In *Lee v Lee* the Court awarded the plaintiff damages of \$150,000. The harm done to Mr Staples is comparable. In Mr Lee's case the personal harm done to him was of greater gravity as the publication was targeted at a close-knit community of which he was a senior member. However, here Mr Staples and his family have suffered from personal distress, albeit to a lesser extent, and it is clear that some amount of damage to the reputation of his business can be attributed to the Facebook posts given the communications he had with concerned clients. On balance I consider the harm Mr Staples suffered exclusively as a result of the Facebook posts is comparable to, but less than, that in *Lee v Lee*.

[96] Having regard to the evidence and the cases above, I find the following considerations to be relevant in assessing the appropriate level of general damages:

- (a) prior to the Facebook posts Mr Staples had a high public profile and a positive reputation;
- (b) the gravity of the defamation here was high — Mr Freeman left few aspects of Mr Staples' reputation unsullied;

- (c) Mr Staples suffered considerable personal distress and concern for the future of his business by virtue of the posts, such that he immediately issued defamation proceedings to have the statements contained in them taken down;
- (d) the statements were taken down as a result of the interim injunction so the extent of their publication was limited to the five days they were live, on a page with around 400 likes, and some evidence of engagement from users;
- (e) I accept some of Mr Staples' clients saw the posts and contacted him to share their concerns; and
- (f) Mr Freeman's financial motivation to defame Mr Staples and his attempts to exhort him would justify an award of aggravated damages.

[97] I consider the seriousness of the defamation here is more similar to *Lee v Lee* than *Hunter v Ross* and justifies an award of \$120,000.

Punitive damages

[98] In exceptional cases punitive damages may be ordered. They are ordered to punish a defendant who has "acted in flagrant disregard of the rights of the plaintiff" rather than to compensate the plaintiff.⁴⁰ In *Siemer v Stiassny*, the Court of Appeal observed that:⁴¹

... if general damages are awarded which somehow shade into aggravated damages which in turn somehow shade into exemplary damages, there is a distinct possibility that there will be double or even triple compensation. The problem is not unlike the conceptual problems in the criminal law in sentencing: it is the *totality* of the award which matters at the end of the day, not how the individual component parts are made up.

⁴⁰ Defamation Act 1992, s 28.

⁴¹ *Siemer v Stiassny*, above n 33, at [56] (emphasis in original) (footnote omitted).

[99] Punitive damages should only be awarded “where there is a need to punish the defendant beyond the award for general damages”.⁴² Mr Morten submits I should order punitive damages of \$10,000.

[100] I decline to order punitive damages. The aggravating factors that would justify punishment and specific deterrence have already been considered in reaching the \$120,000 award of general damages. That award is enough to punish and denounce Mr Freeman and his conduct.

Interest

[101] Perhaps surprisingly, interest has not frequently been sought or awarded in claims for defamation.

[102] Mr Staples seeks interest on the damages from the date the cause of action arose.

[103] These proceedings were filed prior to 1 January 2018, so interest is covered by the Judicature Act 1908 rather than the Interest on Money Claims Act 2016.⁴³

[104] Section 87 of the Judicature Act provides:

87 Power of Courts to award interest on debts and damages

- (1) In any proceedings in the High Court, the Court of Appeal, or the Supreme Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest as such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this subsection shall—

- (a) authorise the giving of interest upon interest; or
- (b) apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise; or

⁴² *Williams v Craig*, above n 19, at [34].

⁴³ Interest on Money Claims Act 2016, ss 2, 5 and 7.

- (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (2) In any proceedings in the High Court, the Court of Appeal, or the Supreme Court for the recovery of any debt upon which interest is payable as of right, and in respect of which the rate of interest is not agreed upon, prescribed, or ascertained under any agreement, enactment, or rule of law or otherwise, there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as the Court thinks fit for the period between the date as from which the interest became payable and the date of the judgment.
- (3) In this section the term the prescribed rate means the rate of 7.5½ percent per annum, or such other rate as may from time to time be prescribed for the purposes of this section by the Governor-General by Order in Council.

[105] Before it was amended as from 1 January 2018, r 11.27 of the High Court Rules 2016 stated:

11.27 Interest on judgment debt

- (1) A judgment debt carries interest from the time judgment is given until it is satisfied.
- (2) The interest is at the rate prescribed by or under section 87 of the [Judicature] Act or at a lower rate fixed by the court.
- (3) The interest may be levied on the judgment under an enforcement process (as defined in rule 17.3).

[106] In *Solomon v Prater* (decided under the Interest on Money Claims Act) Clark J said:⁴⁴

[145] As the amount on which interest is to be awarded was not quantified on the day the cause of action arose I determine that the date on which interest begins to accrue is the date of this judgment as that is the day on which the sum attracting interest is quantified. ...

[107] In *Crush v Radio New Zealand Ltd*, Doogue J ordered interest from the date of conclusion of the trial.⁴⁵

[108] I make two observations. First, there have been significant delays in these proceedings that have not involved Mr Freeman as he has not been an active participant. Second, interest at the prescribed rate from the date the cause of action

⁴⁴ *Solomon v Prater*, above n 19.

⁴⁵ *Crush v Radio New Zealand Ltd* HC Dunedin CP104/86, 20 December 1990.

arose would be a substantial sum. Given Mr Freeman's lack of responsibility for the delay, I find it would be disproportionate and unfair to award interest as claimed.

[109] Further, as in *Solomon*, the amount Mr Freeman owes on which interest is to be awarded had not been quantified until this judgment. I find it principled to allow interest to accrue under r 11.27 at the prescribed rate and refrain from ordering interest from the date the cause of action arose.

Costs

[110] Costs shall be ordered against Mr Freeman on a 2B basis together with disbursements as certified by the Registrar.

Result

[111] Mr Freeman is liable to Mr Staples in defamation.

[112] I order Mr Freeman pay Mr Staples the following:

- (a) damages of \$120,000; and
- (b) interest from the date of the original defamation judgment, being 4 June 2021.

Doogue J

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