

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

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

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

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

JUDGMENT OF DOOGUE J

This judgment was delivered 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 earthquakes 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, 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 keep 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"

[sic] [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.

[sic] [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 ever attempted at any stage to refer the debt to the appropriate judicial body. Instead, Mr Staples alleges Mr Freeman sent 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

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

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

... 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 ...

[24] On 23 July 2014 Mr Winston Peters MP (Mr Peters) made a speech in Parliament. Among other things, Mr Peters accused Mr Staples of “a long list of fraudulent practices” and using his companies “to defraud, mislead and cheat people”. He alleged Mr Staples and the people he employed “did not actually provide genuine technical reports” and failed to pay subcontractors, Filipino workers, GST and PAYE. These allegations are virtually identical to those made in Mr Freeman’s affidavit. It was a comprehensive attack on Mr Staples’ character.

[25] Most of this speech was broadcast by Mediaworks on Campbell Live (the first Campbell Live programme). Mr Staples’ live reaction to the speech was recorded and broadcast. On 30 July 2014 Mediaworks broadcast a second Campbell Live programme. This was produced by the third defendant and starred the fourth defendant. Mr Staples alleges this programme was defamatory. Mediaworks raises several affirmative defences to that allegation.

[26] Mr Staples says Mr Freeman republished the affidavits and statement of defence, knowingly in breach of the interlocutory injunction, to Mr Peters. He has provided the Court with a series of phone conversations between Mr Freeman and Mr Peters, alongside copies of the documents he alleges were provided.

[27] Before embarking on my determination of the issues, I observe that Mr Peters is not a party to this proceeding and Mr Staples seeks no remedy from him. Thus I have not heard evidence on these matters directly from Mr Peters. I am obliged, however, to make some findings of fact concerning any involvement Mr Peters may have had in any publication of the alleged defamatory statements. That said, readers of this decision need to understand that the formal proof procedure in this case does not require the Court to afford the right to Mr Peters to be heard on the evidence before the Court.

[28] There is no evidence as to how the recordings of Mr Peters’ conversations with Mr Freeman came into existence or how Mr Staples came to be in possession of them.

However, there is no evidence to counter the authenticity of the recordings. I am satisfied they are of sufficient probative value to be relied upon by the Court.

Issues for determination

[29] Whether Mr Staples has established that:

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

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

[31] 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).

[32] 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

[33] Seven affidavits were filed in support of Mr Staples' claim.

[34] 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 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 has now done so.

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

[35] Hong Mei Staples, Mr Staples' wife (Mrs Staples), 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.

[36] 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".

[37] 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.

[38] 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?

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

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

[15] For a statement to bear a (defamatory) meaning alleged, two fundamental pro-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.

[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.

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

[41] 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.

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

[43] The following four definitions 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

[44] 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) *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at 843.

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* [2020] NZCA 305 at [44].

The Facebook posts

[45] 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.

[46] They clearly amount to an attack on his 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

[47] 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.

[48] Aside from (e), they are defamatory in their natural and ordinary meaning.

[49] 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 find the statement of defence contained defamatory statements.

[50] 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.

[51] Mr Freeman also alleges Mr Staples uses unqualified assessors; has failed to pay subcontractors; has failed to pay IRD and PAYE 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.

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

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

[54] 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 a Disputes Tribunal.

[55] 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.

[56] 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.

[57] 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.

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

[59] Preparatory to determination of other issues I will also determine whether Mr Peters' speech in Parliament was defamatory of Mr Staples.

Mr Peters' statements in Parliament

[60] After allegedly receiving the District Court documents, Mr Peters made the following speech in Parliament:

Rt Hon WINSTON PETERS (Leader - NZ First) ... We are aware of serious complaints against a Mr Bryan Staples and his companies operating in Christchurch on a range of matters. Reliable information has come to us of a *long list of fraudulent practices* carried out by Bryan Staples and his various companies. Mr Bryan Staples has used his companies to *defraud, mislead, and cheat people*—[Interruption]—and it is not a laughing matter, I say for Jami-Lee [Ross]’s benefit. We want to set out the nature of the serious concerns that we are raising today, which have been raised with authorities, which have clearly failed to act to apprehend and stop this man’s so-called business activities.

The main activity of complaint was his companies’ purporting to carry out technical inspections of properties for earthquake compensation purposes, which neither *he nor his companies and the people they employed were qualified* to do.

...

... They were paid, but *did not actually provide genuine technical reports*. The reports supplied were useless. His companies and Mr Staples also employed a number of subcontractors who carried out work on damaged properties. Mr Staples and his companies got paid *but the subcontractors did not* ...

...

... We understand that he and his companies had *no intention of paying numerous subcontractors*.

Mr Staples carried out work and registered for GST as a business, and he accepted payment for work, which he then issued GST invoices for, but he *did not file returns nor pay the GST*. It would also appear that Mr Staples *directly instructed his company and his employees not to pay GST*. It appears he employed the old tactic that whenever people demanded payment, he began to pretend that there was a dispute. Then Mr Staples would use every delaying tactic possible, *never intending to actually defend any claim nor pay any part of it*.

He also brought in Filipino workers under contract. There are two issues. How did he get these people by Immigration New Zealand and the Ministry for Business, Innovation and Employment, and how did he influence those two departments to allow these people in? It is clear from the evidence that *he had no intention of treating these immigrant workers lawfully*, which raises the issue of why, before they obtained immigration status, these two departments did not do due diligence to avoid such breaches of our employment law. The second issue is that *he simply did not pay these Filipino workers*. He left them in dire straits. He and his companies *failed to make Inland Revenue Department returns or make payments of PAYE tax for the Filipino workers*. He *instructed his company employees not to file PAYE returns and not to pay their PAYE taxes*. The list goes on, but in the time available those are the main matters that we have got to say today.

...

Mr Staples is the man, of course, who has been painting himself on TV as the modern Robin Hood. Well, he is halfway there. He is taking from ordinary people, but he is not giving to the poor. He is Robin Hood in reverse. ...

[emphasis added]

[61] This speech, in its natural and ordinary meaning, alleged that Mr Staples has used his companies to defraud, mislead and cheat people. Further, it alleges he failed to provide genuine technical reports; had no intention of paying subcontractors; directly instructed his companies and employees to not pay GST and PAYE; and exploited Filipino workers.

[62] I find these allegations would bring Mr Staples into disrepute in the eyes of right-thinking members of the public and would negatively affect his reputation in more than a trivial or minor way. They were, therefore, defamatory of him.

[63] Absolute privilege protects Mr Peters from legal action in relation to these statements.¹⁴ That privilege is limited to statements made within Parliament.¹⁵ Accordingly, those who republish these statements outside Parliament, including Mr Peters, are not protected

Did Mr Freeman publish the statements?

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

The Facebook posts

[65] 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 find on the balance of probabilities that it is more likely than not that Mr Freeman published the Facebook posts.

¹⁴ Defamation Act 1992, s 13(1).

¹⁵ *Jennings v Buchanan* [2004] UKPC 36, [2005] 2 NZLR 577 at [20].

The District Court documents

[66] The District Court documents require substantially more analysis.

[67] Mr Morten submits there is a clear paper trail showing Mr Freeman supplied the District Court documents to Mr Peters, and that Mr Peters in turn supplied them to Mediaworks. He argues Mr Freeman is liable for publishing the documents to Mr Peters, and also for Mr Peters' subsequent republication in Parliament and to Mediaworks.

[68] I now set out the evidence on which he relies.

[69] Mr Staples provided transcripts of phone conversations between Mr Freeman and Mr Peters. He says they are true copies of an electronic voice recording of conversations between Mr Freeman and Mr Peters.

[70] Mr Staples has met Mr Freeman multiple times and positively identifies his voice in the electronic voice recordings. He also identifies Mr Peters' voice on the telephone message and on each of the conversations he had with Mr Freeman.

[71] I have listened to the recordings. I have no reason to doubt that Mr Peters is one of the parties to the conversation.

[72] Dates are not provided with the transcripts, but Mr Staples says it is clear from the context of the discussions that they took place in July 2014. I agree.

[73] The relevant excerpts from the transcripts are:

Message received at 2.34 pm

WP: Giddy its Winston Peters here. Ahh look we've been going through all those files, we've annotated the parts we can use. We're going to go to a news source to get an exclusive for them to run and that's what our plan is. All the background work by us has been done, as a result of the helpful information we've got from you guys, so yes we are most certainly acting on it but will wait and see the pick-up we can get from an organisation, the story needs a detailed coverage and we hope to run it on a tv outlet without saying which one it is or let anyone know at this point in time. Thank you very much. Bye.

CALL BETWEEN WINSTON PETERS (WP) AND RICHARD FREEMAN

...

WP: What I said was we've been through the whole thing and annotated the parts we think we can use.

RF: Yep.

WP: We can give it to an exclusive agency to try and get them to run the thing on full. That is we want to try get it on TV.

RF: Yeah

WP: On TV and expose that way, that's the best we can do for it.

RF: Yeah that's what I thought. But I knew you had parliamentary privilege and at the end of the day I'm gagged by an order.

...

RF: I'll leave it with you. There are parts, all we need, I just want to break it,

...

RF: It's going to be reasonable messy when it does break so, yeah, but, might be a bit of, I sort of thought you'd get a, you might get a fair ride into the election with it that was all.

WP: Yeah well we'll give it our best shot ...

...

[74] After a few weeks, on 17 July 2014, Mr Freeman sent an email to various Ironclad affiliates complaining that Mr Peters had "failed to deliver". Instead, in Mr Freeman's view, Mr Peters had simply "handed what he wants to TV3 and [waited] for them to drop a bomb". Mr Freeman says he had a meeting with TV3 Campbell Live Producer Kate McCallum for a "coffee" and that he told her he had a story but was "under High Court order". This is an obvious reference to the fact he was restrained from publishing the District Court documents by Judge Kellar's injunction.

[75] Mr Staples provided the transcript of a heated phone call that occurred after this between Mr Peters and Mr Freeman. Mr Staples estimates, by reference to the exhibited email between Mr Freeman and associates, this conversation took place on 17 July 2014, six days before Mr Peters' speech in Parliament on 23 July 2014.

[76] The relevant excerpts from the transcript are:

CALL BETWEEN WINSTON PETERS AND RICHARD FREEMAN

...

RF: Yeah I know you're talking but I gave you the information Winston

WP: You gave me ... now just shut up for a second

RF: No don't tell me to shut up. I gave you the information, I gave you a ride to this election Winston and all you've done is keep me out of the bloody loop.

WP: Well hang on a second. I got information here in Auckland about this happening in Christchurch right? I asked those people to get back to me months ago, you're one of them.

RF: Mate I uncovered everything. I uncovered the guy in Manila and everything for you I handed them to you on a silver platter.

...

WP: Listen mate I took the story, I put a lawyer on it and myself we analysed the thing annotated it and gave it to a specialist person at TV3 where we thought on Campbell's show I'd get the best exposure for you. Now I can't do anymore than that and I did that.

RF: But you've got parliamentary privilege Winston, why aren't you using it? You can get up and you can point a finger at this prick and tell him that he hasn't paid,

...

WP: You should of got off your arse months ago and given it to me.

RF: I couldn't get off my ass months ago cos I'm on defamatory order and when I did give it to you I've given you stuff under High Court order which I wouldn't of done, I've done it under trust. So don't rub my nose like that. I've given you something I've given no one else before.

...

RF: I fucken gave you my vote last year too Winston that's why I gave you the papers.

WP: If you think I take a story and don't work on it you're wrong.

...

WP: Look I need to have open the story up with a media expose. I've got two more weeks to go in parliament, but I need the media to open it up because I know what he's going to do, stand back and deny it.

...

WP: ... I asked you months ago for this stuff, I made it very clear to the person at the time, look you guys give me the stuff it will require a lot of work because what's a story in some people's minds and a story the way we want to run it is that you've got to have everything stitched up so there's no way out for the guy.

RF: I know that. Because there's a big risk for you. I understand the risk that's in there for you.

...

WP: I'll expose the bastard with parliamentary privilege but I want to get a story off first. I've got next week and the week after that to blow the shit out of the water, I've got parliamentary privilege, I've never given up on that but what I want to do is give some backup on the darn thing.

...

RF: ... if you've already given her the information why would I, I don't want to expose myself. I don't want my name in anything, I don't want, I can't have my name in anything I'm under High Court order ...

[sic]

[77] Mr Staples, in his affidavit, refers to the fourth defendant, Mr Clayton, stating in the second Campbell Live programme he had received over 400 pages of emails and affidavits. The District Court documents are near that length.

[78] Mr Peters filed a sparse affidavit on discovery. In it, Mr Peters admits receiving documents that "may have included material detailed in the Plaintiff's application". Mr Peters deposes they are no longer in his possession, power or control.

[79] There is also the evidence of Mr Moss. He says he met with Mr Freeman three times and Mr Freeman made the following admissions to him:

- (a) the District Court documents were delivered to Mr Peters;
- (b) he knew the District Court documents would be delivered to Mr Peters;
- (c) the documents Mr Clayton waved in the second Campbell Live programme were the District Court documents;
- (d) the only documents provided to Mr Peters were the respondents' documents (the statement of defence and affidavits); and

(e) he retracts his previous allegations about Mr Staples.

[80] Mr Moss' file note records Mr Freeman stating the District Court documents were couriered to Mr Peters by Mr Craig. Mr Freeman also confirmed that the phone conversations were between himself and Mr Peters.

[81] I also consider the fact that, in his speech in Parliament, Mr Peters made substantially similar allegations to those contained in the District Court documents.

[82] I accept Mr Morten's submission that this evidence amounts to a clear paper trail. The phone conversation transcripts illustrate Mr Freeman's motive and intention to publish the documents as widely as possible. They are highly probative. I also note Mr Peters' admission that he may have received the documents in question. Based on the tone and character of his affidavit, had Mr Peters not received the documents I am satisfied he would have said so explicitly.

[83] Mr Freeman's admissions are also largely consistent with the other evidence provided. I note he has taken no action to deny or contest any of the evidence Mr Staples has provided in this regard.

[84] Although Mr Freeman said to Mr Moss that Mr Craig delivered the documents, I find Mr Freeman at least arranged this if not delivered them himself. Mr Freeman said to Mr Peters "I gave you the information", "I gave you the papers" and "I've given you stuff under High Court order". Mr Craig is not mentioned.

[85] I find Mr Staples has proven on the balance of probabilities it is more likely than not that Mr Freeman republished the District Court documents to Mr Peters.

Counterfactuals

[86] I do not need to consider hypothetical affirmative defences in a formal proof determination.¹⁶ However, for completeness, I will consider a defence of absolute privilege.

¹⁶ *Solomon v Prater* [2021] NZHC 481 at [11].

Absolute privilege

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

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 ...

anything said, written, or done in those proceedings by a member of the tribunal or authority, or by any party, representative, or witness, is protected by absolute privilege.

[88] This privilege includes pleadings and documents from the inception of the proceedings, briefs of evidence, affidavits and statements made during interviews with potential witnesses.¹⁷ 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 allegation, whether true or false, that they acted from malice”.¹⁸ However, that 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.¹⁹

[89] The District Court of New Zealand is a court of record established by the District Court Act 2016.²⁰ It has the power to compel the attendance of witnesses and it is an offence to fail to appear after a summons.²¹ 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 could, therefore, be protected by absolute privilege. The question is whether that privilege extends to them being republished outside of the proceedings in which they were filed.

[90] In *Low Volume Vehicle Technical Association Inc v Brett*, the defendant published a hyperlink to an affidavit containing defamatory statements.²² Palmer J thought that the privilege attaching to parliamentary proceedings was equivalent to the

¹⁷ *Rawlinson v Oliver* [1995] 3 NZLR 62 (CA).

¹⁸ *Teletax Consultants Ltd v Williams* [1989] 1 NZLR 698 (CA) at 701 citing *Trapp v Machie* [1979] 1 All ER 489 at 492.

¹⁹ *Teletax Consultants Ltd v Williams*, above n 18, at 701 citing *Trapp v Machie*, above n 18, at 492.

²⁰ District Court Act 2016, s 7.

²¹ District Court Rules 2014, r 9.43; and District Court Act, s 102.

²² *Low Volume Vehicle Technical Association Inc v Brett* [2017] NZHC 2846, [2018] 2 NZLR 587.

privilege attaching to court documents. The former privilege can be lost if the statement subject to privilege is effectively repeated outside of Parliament.²³ The Judge said:

[70] Whether the two statements are absolutely privileged depend[s] on whether Mr Brett's action of hyperlinking to the affidavit is an effective repetition of the statements that breaks the scope of the absolute privilege otherwise afforded them in the affidavit.

[91] He applied that test to the facts before him and concluded:²⁴

... I do not consider hyperlinking to a whole document, without more, is sufficient to break the privilege. A person making a statement in an affidavit has sworn it is true. If a statement in an affidavit is pulled out and quoted or used separately in the post then that could be effective repetition. But a link to the affidavit itself preserves the affidavit, in its original form, intact.

[92] The Judge invoked principles of open justice and free speech in finding absolute privilege extended to the ability of litigants to republish documents from court proceedings after a hearing, if those documents were not subject to confidentiality orders. Specifically, he found:

[73] ... [if absolute privilege does not extend to republication] the public interest in those engaged in the administration of justice being "free from the fear of proceedings and 'the vexation of defending actions'", that is upheld by absolute privilege, could be weakened.

[footnotes omitted]

[93] His decision was reversed by the Court of Appeal, but not on the absolute privilege issue.²⁵ It remains the clearest statement on this matter of law in our jurisdiction.

[94] I note two other cases that have touched on the issue.

[95] In *NR v MR*, the publication of an affidavit in support of a Harassment Act application to a third-party process server for the purpose of service on the applicant

²³ *Jennings v Buchanan*, above n 15, at [20].

²⁴ At [72].

²⁵ *Low Volume Vehicle Technical Association Inc v Brett* [2019] NZCA 67, [2019] 2 NZLR 808.

was protected by absolute privilege.²⁶ That absolute privilege did not, however, extend to statements taken from that affidavit and published to a club manager.²⁷

[96] In *Deliu v Hong*, Associate Judge Osborne found it was “at least arguable” that absolute privilege was not available to the defendant who had published privileged correspondence to outsiders.²⁸ The Judge was not required to finally determine this issue as the case before him was a strike-out application.

[97] In the English jurisdiction the law is clear. An affidavit that is offered as evidence in court proceedings is privileged for those proceedings, but that does not mean it remains absolutely privileged for all purposes thereafter.²⁹ This approach is consistent with the principle that each publication can justify a cause of action in defamation. The Court should examine the purpose for which the statement is offered and the circumstances surrounding it to determine whether absolute privilege applies. If it is not offered for some proceedings-based purpose, then it should not accrue privilege.

[98] It is important to reconcile the policy arguments behind the absolute privilege defence with the individual case in which it is invoked. As stated above at [88], the absolute privilege defence, as it applies to proceedings in court, exists to ensure witnesses can give full and frank testimony without fear of legal retribution. There is no doubt that affidavits are privileged when used for the purpose of court proceedings. However, that argument no longer applies when the witness seeks to republish their evidence outside of the proceedings, especially if those proceedings have concluded and they have already given their full and frank testimony. Publication outside the proceedings is properly viewed as separate from publication inside the proceedings.

[99] Similarly, even if the principle of open justice extends to the ability of litigants to publish a document from court proceedings outside of those proceedings, it should not protect them from the consequences of defamatory statements contained within. If the converse were true, it would be ripe for abuse. An individual could produce an

²⁶ *NR v MR* [2014] NZHC 863 at [67].

²⁷ At [68]-[72]. That publication was instead protected by qualified privilege.

²⁸ *Deliu v Hong* [2013] NZHC 735 at [130].

²⁹ *Smeaton v Butcher & Ors* [2000] Lexis Citation 2965, [2000] EMLR 985.

affidavit containing tenuous or plainly false allegations for court proceedings and then publish that affidavit to the world without consequence. The principle of open justice must not extend to freedom from consequences, otherwise the citizen who finds their good name impugned by defamatory statements contained in subsequently published court documents would find themselves bereft of a remedy.

[100] Even if open justice did require absolute privilege to apply generally to the republication of court documents, it would have to yield to the specific circumstances in this case. Mr Freeman republished the District Court documents knowingly and blatantly breaching an injunction. The injunction restraining publication clearly displaces the general principle of open justice here.

[101] If I was required to consider a defence of absolute privilege, it would fail on the evidence before me.

Remedies

[102] As Mr Staples has made out the elements of his claim, 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

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

Damages

[104] 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.³⁰ Money cannot restore reputation and the courts must embark upon the convoluted task of determining what a defamatory statement is “worth”.³¹ To a large extent, the purpose of awarding money is to vindicate the defendant in the eyes of the public.³² In that sense a symbolic element exists alongside the compensatory.

[105] In *John v MGN Ltd* the principles were set out as thus:³³

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 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.

[106] From these principles Clark J in *Solomon v Prater* extracted and applied the following considerations:³⁴

- (a) the gravity of the defamation;
- (b) the extent of the publication;

³⁰ *Solomon v Prater*, above n 16, at [99].

³¹ Stephen Todd (ed), above n 8, at 881.

³² *Cassell & Co Ltd v Broome & Anor* [1972] 1 All ER 801 (HL) at 824.

³³ *John v MGN Ltd* [1996] 2 All ER 35 at 47-48 adopted in *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [31]; and *Television New Zealand Ltd v Quinn* [1996] 3 NZLR 24 (CA) at 33-38.

³⁴ *Solomon v Prater*, above n 16, at [103].

- (c) the harm suffered by the plaintiff; and
- (d) whether there were aggravating features justifying an award of aggravating damages.

The gravity of the defamation

[107] Mr Morten submits the Facebook posts, the District Court documents and Mr Peters' speech all make serious allegations. He refers to *Solomon v Prater*, where the anonymous letter that formed the basis of the claim alleged Mr Solomon was untrustworthy, engaged in electoral manipulation (if not fraud) and financial impropriety (if not corruption).³⁵

[108] Mr Morten submits the allegations here were more serious and should instead be compared to those in *Karam v Parker*.³⁶ Like Mr Karam, Mr Morten says Mr Staples had a significant and positive reputation before Mr Peters' speech in Parliament and the publication of the Campbell Live programmes. His public profile was high, though less than Mr Karam's. Mr Morten submits the Facebook posts and the District Court documents constituted a full-scale assault on Mr Staples' reputation.

[109] I agree with Mr Morten's submissions. The gravity of the defamation here was only slightly lower than that in *Karam*, and accordingly more severe than the defamation in *Solomon*. Mr Freeman left few aspects of Mr Staples' reputation unsullied.

The extent of the publication

[110] Mr Morten submits Mr Freeman should compensate Mr Staples for Mr Peters' republication of the District Court documents in his speech in Parliament. Additionally, he argues Mr Freeman should be liable for Mr Peters' alleged subsequent republication to Mediaworks, and for the harm stemming from Mediaworks' subsequent republication on each Campbell Live programme. Each Campbell Live programme is a separate publication, so they must be considered separately.

³⁵ *Solomon v Prater*, above n 16.

³⁶ *Karam v Parker* [2014] NZHC 737.

[111] Mr Morten submits that, in certain circumstances, the publisher of defamatory material may be liable not only in respect of the original publication but also in respect of the republication of the defamatory material by someone else. If the defendant authorises republication of the defamatory words by someone else, or in some way secures its publication, they will be liable not only in respect of the original publication but also in respect of the republication.

[112] Mr Morten refers to *Cutler v McPhail*, where Salmon J said:³⁷

It matters not whether the damages caused by the repetition of the libel are sued for as part of the damage flowing from the original publication to the editor, or separately as the damages flowing from the publication in the newspaper.

[113] Mr Morten acknowledges the original publisher will not be liable in respect of subsequent publication merely because the republication was a natural or probable consequence of the original publication, if the repetition is the voluntary act of a free agent (a free agent being someone who the defendant has no control over and for whose acts they are not answerable). However, Mr Morten submits that is not the case here.

[114] The law was set out by Gendall J in *Woodgate v Harris* as thus:³⁸

[16] Generally speaking, where a person to whom publication of defamatory matter is made, and republishes that on a different occasion, the original publisher would not be liable to a plaintiff for repetition of that to another person. But the original publisher will be liable if he/she authorised the repetition by another person or intended that that would occur. An original publisher is also responsible for republication if the repetition was foreseeable as a natural and probable consequence of the original publication. Individual cases will, however, depend on their own facts and repetition of a defamatory statement by someone else can sometimes be treated as an intervening act for which the original maker of the statement is not responsible.

[115] The issue is whether there has been a breach in the chain of causation such that the original publisher cannot be held to account for subsequent publications. In *Slipper v British Broadcasting Corporation*, Stocker LJ said that relevant questions are whether the republication reproduced the sting of the defamation, whether the

³⁷ *Cutler v McPhail* [1962] 2 QB 292 at 299.

³⁸ *Woodgate v Harris* [2011] NZAR 787 (footnotes omitted).

respondent invited the republication, and whether the respondent anticipated that such republication would repeat the sting of the defamation.³⁹

[116] It is important to recognise the principle, established in *Associated Newspapers Ltd & Ors v Dingle* in the United Kingdom and adopted here in New Zealand, that it is appropriate to isolate the damage caused by an individual publication in the sense of confining the damage to the words published by the defendant.⁴⁰ As identified by the Court of Appeal in *Television New Zealand Ltd v Ah Koy*.⁴¹

[31] The principle of isolation of damages is also consistent with the fact that when various publications are made independently of each other, and each is defamatory of the plaintiff, the publishers are several rather than joint tortfeasors and liable only for the damage done by their own publication.

[117] However, these were not independent publications. It would be inappropriate to isolate the damage caused by each of them.

[118] I have found that Mr Freeman at least arranged for the District Court documents to be provided to Mr Peters, if not provided them himself, so as to constitute publication by him. I also find that Mr Freeman actively encouraged Mr Peters to use absolute privilege to make allegations about Mr Staples. I observe that the allegations Mr Peters in fact made were substantially the same as the allegations made in the District Court documents.

[119] There is a clear causative link between Mr Freeman's publication of the District Court documents to Mr Peters and Mr Peters' speech in Parliament. Mr Peters either could not or would not have made the statements he did without the information provided by Mr Freeman. I find that Mr Peters' speech in Parliament was a known, probable and encouraged consequence of Mr Freeman's publication of the defamatory District Court documents. Mr Freeman's liability is not excused by Mr Peters' intervening and autonomous decision to speak in Parliament because it appears to have been exactly what Mr Freeman wanted.

³⁹ *Slipper v British Broadcasting Corporation* [1991] QB 283 (CA) at 296.

⁴⁰ *Associated Newspapers & Ors v Dingle* [1962] 2 All ER 737 adopted by *Jensen v Clark* [1982] 2 NZLR 268 (HC) at 278-279.

⁴¹ *Television New Zealand Ltd v Ah Koy* [2002] 2 NZLR 616 (CA).

[120] Mr Freeman and Mr Peters would be concurrently liable for the harm stemming from Mr Peters' speech in Parliament. Of course, this case is complicated by the fact Mr Peters is protected by parliamentary absolute privilege. This leaves Mr Freeman responsible for the whole loss to Mr Staples.

[121] I now turn to the republications by Mediaworks. The issue of whether or how the District Court documents came to be in Mediaworks' possession is an issue for the upcoming trial. It would be inappropriate for me to pass comment here. I also decline to rule on whether an affirmative defence is available to Mediaworks in relation to their publications. I only consider whether the Campbell Live programmes were an anticipated and intended consequence of Mr Freeman's publication.

Can Mr Freeman be liable for harm caused by the first Campbell Live programme?

[122] The first Campbell Live programme did little more than replay Mr Peters' statements in Parliament to a greater audience. It reproduced the sting of the defamation by repeating the allegations. The extra causative step required is very small. The fact the media would replay a speech by a parliamentarian making serious allegations about a public figure to the general public was clearly foreseeable to Mr Freeman. It was a natural and probable consequence of Mr Freeman encouraging Mr Peters to make the speech. It would be artificial to differentiate the harm caused by Mr Freeman encouraging and enabling the speech, the harm caused by the speech, and the harm caused by the media publishing the speech. The conversations between Mr Peters and Mr Freeman indicate Mr Freeman invited the media republication and would certainly have hoped it retained the sting of the defamation.

[123] In *Woodgate*, the respondent provided the defamatory "story" to one media outlet. Many other media outlets then latched onto it and made their own publications. Gendall J seemingly saw no reason why the respondent should escape responsibility for the subsequent publications.⁴²

⁴² *Woodgate v Harris*, above n 38.

[124] I consider this situation analogous to *Woodgate* in terms of remoteness and causation. I see no break in the chain. Mr Freeman is responsible for the harm caused by Mr Peters' speech in Parliament and the first Campbell Live programme.

[125] The second Campbell Live programme, on the other hand, was of a different character. I find that Mr Clayton's independent production and investigation is sufficiently intervening to remove Mr Freeman's responsibility. It is too remote from Mr Freeman's act of publishing the District Court documents to Mr Peters.

[126] The extent of the publication is:

- (a) the Facebook posts, which were liked, commented on and shared by a small number of people (beyond that it is difficult to determine how many people viewed them);
- (b) the publication by Mr Freeman to Mr Peters;
- (c) Mr Peters speech in Parliament, heard by at least other Members of Parliament; and
- (d) Mr Peters speech in Parliament as it was incorporated in the first Campbell Live programme, broadcast nationally.

[127] Clark J, in *Solomon v Prater*, referred to the following passage from the English case of *Dhir v Saddler*.⁴³

[55] In my judgment, the authorities demonstrate that it is the *quality* of the publishees 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. ...

[128] 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 it was published to and on Mr Staples.

⁴³ *Dhir v Saddler* [2017] EWHC 3155 (QB) (emphasis in original).

[129] In *Lee v Lee*, the defendant wrote a defamatory article that was published in a weekly Korean language newspaper.⁴⁴ It had a print run of 3,000, was published online and targeted the Korean community. The plaintiff was a senior member of the Korean community and the article defamed them primarily in relation to their actions as part of that group. Although the article received limited circulation outside the community, it caused substantial harm within it.

[130] In *Solomon v Prater*, the defendant wrote a letter containing defamatory statements about Mr Solomon.⁴⁵ It was distributed to a confined community of Moriori with a limited number of recipients. However, as in *Lee*, Mr Solomon was a senior figure within that community, so the publication caused substantial harm.

[131] In *Karam v Parker*, the first defendant was the administrator of a Facebook page and creator of a website that made defamatory comments.⁴⁶ He took special steps, including an interview with a newspaper, to raise the profile of the site and the Facebook page.

[132] Here, the extent of the publication was greater than in both *Lee* and *Solomon*. As in those cases, Mr Staples had a strong profile in the relevant community, in this case the community of Canterbury. It was also greater than in *Karam*. Campbell Live was a national programme with a viewership of several hundred thousand people when the first programme was broadcast.

The harm suffered by Mr Staples

[133] Mr Freeman must compensate Mr Staples for the reputational damage, hurt, distress and emotional harm that resulted from the Facebook posts, Mr Peters' speech in Parliament and the first Campbell Live programme.

[134] Hong Mei Staples, Mr Staples' wife, deposes that Mr Staples does not like to talk about the harm caused by the defamation, but that it started a dark time for him and their family. She says that, after the first Campbell Live programme, Mr Staples'

⁴⁴ *Lee v Lee* [2018] NZHC 3136.

⁴⁵ *Solomon v Prater*, above n 16.

⁴⁶ *Karam v Parker*, above n 36.

world “just came crashing down”. He stayed home for a couple of days, something he never did, and was not sleeping well.

[135] 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.

[136] 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.

[137] Mr Staples says when he first arrived in Christchurch after the quake to work for EQC he was faced with a confused and chaotic organisation. 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.

[138] He says when his letters to the high command of EQC about ineptitude fell on deaf ears he set up his own business to offer better access to justice for homeowners. He felt under enormous pressure from 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.

[139] 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.⁴⁷

[140] 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.

⁴⁷ *Siemer v Stiassney* [2011] NZCA 106, [2011] 2 NZLR 361 at [87].

[141] The first episode was the initial extortion attempt and Mr Staples' experience of Ironclad's "enforcers".

[142] The second episode was the publication of the Facebook posts. Mr Staples says he was immediately concerned about them and the potential damage they could do to the good reputation he had built up since he left EQC. He says the posts painted a picture of more and more people coming forward every day. Mr Staples was disturbed by the baseless attacks and was worried about how they would affect his business. He therefore obtained the injunction referred to earlier. Having already been threatened by "enforcers", he was on edge as to what the next step would be.

[143] The third episode was Mr Freeman's further harassment of Mr Staples, which led to Mr Staples obtaining a restraining order against him.

[144] The fourth episode was the broadcast of the first Campbell Live programme, which included Mr Peters' speech in Parliament. He says Mr Freeman and Mr Peters were in the background pulling the strings of the "ambush". Mr Staples says he was used to TV crews coming into his office and usually got a "fair run". However, this left him blindsided.

[145] He was asked to sit in front of his computer at his desk, which was quite normal. However, he was surprised when he was asked to go to the live Parliament TV to watch what was happening. His live first reaction to Mr Peters' speech was recorded. He immediately recognised the speech as being based on the District Court documents. He discerned it had been orchestrated by Mr Freeman and knew that Mr Freeman had breached the non-publication orders of the District Court.

[146] Mr Staples says he got up and went to the boardroom to recover as he was sick to his stomach. He turned the lights out and sat in the room in the dark for about an hour and then, when he had regained composure, he addressed his 40 staff. He says he was in a daze as he walked around trying to console them, some of whom were crying. He felt there was real pressure on him to show strength and composure so he did not display his emotion.

[147] Mr Staples watched the first Campbell Live programme at home with his wife and young son and describes it as “so shockingly bad, twisted and untrue”. He started crying, with his wife and son trying to console him. He says he felt helpless and that he could do nothing to stop the onslaught.

[148] Mr Staples was supported by friends and business associates who phoned and offered help but felt there was nothing anyone else could do. He says he felt he had to front up the next day and show the staff they would get through it so, even though he felt he could not take a step inside his office building, that is what he did. He says was unsteady on his feet from the trauma and made sure he was first to arrive at the office so he could be sitting down when others arrived. The mood in the office was sombre and he noticed the deathly silence, with no phones ringing.

[149] Mr Staples says he is embarrassed by the detail his wife disclosed in her affidavit but that it is all true. He was not sleeping well because he did not know where all this was likely to go. He has been on antidepressant medication since Mr Freeman entered his life.

[150] Then the fifth episode, the second Campbell Life programme, occurred. He cannot be compensated for the harm that was caused by the programme in this application for the reasons given in [125] hereof.

[151] Mr Staples is robust. Nonetheless, he has evidently suffered substantial emotional harm, hurt and distress alongside the damage to his previously positive reputation. This is the loss Mr Freeman must compensate him for.

Aggravated damages

[152] Aggravated damages are awarded when the harm caused by the defamation is exacerbated because of the manner by which the defendant defamed the plaintiff or the defendant’s subsequent conduct.⁴⁸ The Court of Appeal in *Siemer v Stiassney* found that the best approach is to award an overall sum for general damages without

⁴⁸ See *Siemer v Stiassney*, above n 47, at [51].

particularising the portion of that sum accruing from aggravated damages.⁴⁹ That is the approach I adopt here.

[153] 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. These resulted in the restraining order made by Judge Neave in August 2015;⁵⁰
- (c) Mr Freeman knowingly and cynically flouted the terms of the interim injunction imposed by Judge Kellar by republishing the District Court documents to Mr Peters;
- (d) Mr Freeman advanced the defence of truth at both sets of District Court proceedings and has not publicly recanted his allegations; and
- (e) Mr Freeman knowingly and cynically encouraged Mr Peters to make defamatory allegations in Parliament because parliamentary privilege would leave Mr Staples with no recourse against Mr Peters.

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

Overall assessment

[155] I find that *Karam v Parker* is the most analogous case.⁵¹ The damages apportioned to the main defendant there were \$340,500, or \$370,800 in today's terms. The gravity there was slightly higher, but the extent of publication slightly lower.

⁴⁹ At [73].

⁵⁰ *Staples v Freeman*, above n 4.

⁵¹ *Karam v Parker*, above n 36.

There are also more aggravating factors here. Mr Morten submits a total award of \$350,000 is not excessive. I have considered the gravity of the defamation, the extent of the publication, the harm suffered by Mr Staples, and the substantial aggravating factors and find that \$350,000 is an appropriate damages award.

[156] I do not allocate any of this damages award to the harm suffered by Mr Staples or CRS from the second Campbell Live programme. If that were included, the damages award would be higher.

Punitive damages

[157] In exceptional cases punitive damages may be ordered. They are ordered to punish the defendant rather than compensate the plaintiff. In *Siemer v Stiassney*, the Court of Appeal observed that:⁵²

... 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.

[158] Punitive damages should only be awarded “where there is a need to punish the defendant beyond the award for general damages”.⁵³ Mr Morten submits I should order punitive damages of \$10,000.

[159] I decline to order punitive damages. The aggravating factors that would justify punishment and specific deterrence have already been considered in reaching the \$350,000 award of general damages. That award is enough to punish and denounce Mr Freeman and his conduct.

Interest

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

⁵² *Siemer v Stiassney*, above n 47, at [56] (emphasis in original).

⁵³ *Williams v Craig*, above n 33, at [31].

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

[162] 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.

[163] Section 87 of the Judicature Act provides:

87 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
 - (c) affects 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 7.5% 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.

[164] Before it was amended, rule 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).

[165] In *Solomon v Prater* (decided under the new legislation) Clark J said:⁵⁴

[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.

[166] In *Crush v Radio New Zealand Ltd*, Doogue J ordered interest from the date of trial.⁵⁵

[167] 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 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.

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

Costs

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

Result

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

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

⁵⁴ *Solomon v Prater*, above n 16.

⁵⁵ *Crush v Radio New Zealand Ltd* HC Dunedin CP104/86, 20 December 1990.

- (a) damages of \$350,000;
- (b) interest accruing from the date of this judgment at the rate of 7.5% per annum;
- (c) scale costs of \$20,097.50; and
- (d) disbursements as certified by the Registrar.

Doogue J

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