

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV 2022-404-474  
[2022] NZHC 2165**

UNDER The Defamation Act 1992  
BETWEEN **MARC ROBERT SPRING**  
Plaintiff  
AND **ROMAN MASON WILLIAMS**  
also known as **CRAIG**  
**MASON**  
Defendant

Hearing: 29 August 2022  
Appearances: The plaintiff in person  
No appearance for the defendant  
Judgment: 29 August 2022

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**JUDGMENT OF CAMPBELL J**

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*This judgment was delivered by me on 29 August 2022 at 4.00 pm pursuant to Rule 11.5  
of the High Court Rules*

*Registrar/Deputy Registrar*

## **Summary**

[1] The defendant, who goes by the name Craig Mason, posted statements on Instagram alleging that the plaintiff, Marc Spring, had engaged in serious criminal conduct.

[2] Mr Spring sued Mr Mason for defamation. Mr Mason did not attempt to justify his statements and did not file a statement of defence.

[3] I find that Mr Mason defamed Mr Spring. I make a declaration to that effect. I find that Mr Mason acted maliciously and that Mr Spring suffered loss as a result of Mr Mason's defamatory post. I award Mr Spring general damages of \$170,000.

## **Background**

[4] Mr Spring is a self-employed businessperson who sells cars in the new and used car sales industries. His clients include the Giltrap Group, with which he has had a long business relationship.

[5] Mr Mason is an unemployed car salesperson and former employee of Giltrap Audi.

[6] In March 2022, Mr Spring became aware of a number of social media posts that Mr Mason had made about various employees of the Giltrap Group. Mr Spring also learned that Mr Mason had posted a photograph of him to Instagram, with a text overlay stating:

Now this guy's is Marc Spring he is Michael gilltraps coke dealer. This guy's deals with the gangs for the Giltraps all the cars sold to the Comancheros from the Giltraps using cash and drug money goes through him.

[7] Mr Mason's Instagram account was not public, but his posts were visible to his 949 followers.

[8] On 22 March 2022, Mr Spring emailed Mr Mason asking for a written apology and \$50,000 in settlement for hurt feelings and damage to reputation. He said that if this was not forthcoming, he would promptly file a defamation proceeding. Mr Mason

responded by email on 30 March 2022 with a series of abusive remarks. Mr Mason also said he was not responsible for “anything that I may or may not have posted on my private Instagram if someone chooses to take something and then shear it around”.

[9] Given that response, on 4 April 2022 Mr Spring filed this proceeding. He claims Mr Mason defamed him in that the text of the Instagram post falsely suggests he is a criminal drug dealer who is involved with gangs and money laundering. He seeks a declaration that Mr Mason is liable to him in defamation. He also seeks general and special damages of \$431,753.09, and punitive damages of \$50,000.

[10] The proceeding was served on Mr Mason on 9 April 2022. On 3 May 2022, Mr Mason advised the Deputy Registrar that he would not be submitting any documents in the proceeding. He did not file a statement of defence. The matter came before me for formal proof.

#### **Affidavit evidence**

[11] Mr Spring filed three affidavits for the formal proof hearing.

[12] Mr Spring deposes that the success of his business model is based on his reputation with long-established car dealers within the Auckland area and nationwide. He says that reputation is very important in the car industry and it helps in maintaining an advantage in a highly competitive market. It is the reason people and companies choose to do, or not to do, business with him. He deposes that allegations of criminal activity are inconsistent with the good reputations of the companies with which he deals. Accordingly, Mr Spring says, he takes any attack on his reputation seriously as his livelihood depends on maintaining the credibility and trust he has built up over 25 years in business.

[13] Mr Spring deposes that he does not use drugs and is not involved in any criminal activity. His only convictions are a 1997 conviction for dangerous driving and a 2001 conviction for speeding. He says therefore that Mr Mason’s allegations are baseless and completely untrue. He deposes that since Mr Mason’s Instagram post, around 10 people within his dealer network have asked him about the allegations. He

says they have expressed concerns about the alleged gang connections and insinuations of money laundering.

[14] Mr Spring deposes that Mr Mason's Instagram post has caused him distress, hurt and humiliation. It has had a significant impact on his reputation and livelihood, including his relationships with his children. He says he continues to worry that other business associates, family members and friends will become aware of the post. He refers to the further abusive emails that Mr Mason sent to him after Mr Spring asked him for a written apology. He says he is scared of what Mr Mason may publish next. He deposes that his business has suffered, with sales (through his company, Daytona Group Ltd) being significantly down in the period following Mr Mason's Instagram post.

[15] Hayden Cate, a finance manager and used car manager at Giltrap Audi, deposes that relationships are extremely important in the motor vehicle industry. He says that none of the allegations Mr Mason has made against Mr Spring are true, and that the Giltrap Group scrupulously checks every transaction to comply with the governing anti-money laundering legislation. Mr Cate says the New Zealand motor vehicle industry is a tight-knit group and that many dealers in the community have seen Mr Mason's post and asked questions about it. He says Mr Mason is well-connected in the industry and his post has been circulated across the country.

[16] Mr Cate deposes that he has received multiple phone calls asking him if Mr Mason's allegations are true. He says it is clear the post has done a great deal of damage to Mr Spring personally and to his company, Daytona Group Ltd. Some dealers no longer deal with Mr Spring and others have asked if he is buying their cars with illegally-obtained funds. And, Mr Cate says, Mr Mason's post is continuing to circulate in the industry. It was a topic of discussion at a recent industry conference.

[17] Finally, John Rowe, a chartered accountant, deposes that any reduction in the financial performance of Daytona Group Ltd will directly impact Mr Spring's personal income as sole shareholder. He says he understands the motor vehicle industry has been booming post COVID-19, with vehicle sales being strong across the sector. Against that backdrop, Mr Rowe says, Daytona Group Ltd has suffered a significant

downturn in turnover in the months since Mr Mason's post in March. On an annualised basis, the downturn translates to a \$256,000 reduction in net income. He says it is his opinion that this reduction cannot be explained given the otherwise strong performance in the sector.

### **Issues**

[18] The issues I must determine are:

- (a) Has Mr Spring made out his cause of action in defamation?
- (b) If Mr Spring has made out his cause of action in defamation, what is the appropriate quantum of compensatory damages?
- (c) If Mr Spring has made out his cause of action in defamation, are punitive damages appropriate, and if so, what is their appropriate quantum?

### **Has Mr Spring made out his cause of action in defamation?**

[19] The ingredients of the tort of defamation are threefold. The plaintiff must establish:<sup>1</sup>

- (a) a defamatory statement was made;
- (b) the statement was about the plaintiff; and
- (c) the statement was published by the defendant.

*Was there a defamatory statement?*

[20] Before deciding whether the impugned words are defamatory, a court must decide what they mean. It will generally take the natural and ordinary meaning of the

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<sup>1</sup> Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.2].

words — the meaning ordinary readers and listeners would attribute to them.<sup>2</sup> The New Zealand Court of Appeal has summarised the “reasonable person” test as follows:<sup>3</sup>

- (a) The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?
- (b) The reasonable person reading the publication is taken to be one of ordinary intelligence, general knowledge and experience of worldly affairs.
- (c) The Court is not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication.
- (d) The meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication. The ordinary person has considerable capacity for reading between the lines.
- (e) But the Court will reject those meanings which can only emerge as the product of some strained or forced interpretation or groundless speculation. It is not enough to say that the words might be understood in a defamatory sense by some particular person or other.
- (f) The words complained of must be read in context. They must therefore be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared.

[21] Applying this test, I am satisfied Mr Mason’s Instagram post contained a defamatory statement. The natural and ordinary meaning of the statement is that Mr Spring is a drug dealer who sells cars to gang members, with those cars being paid for by drug money that goes through Mr Spring. The insinuation is clear: Mr Spring is involved in drugs and money laundering. This meaning is plainly defamatory.<sup>4</sup>

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<sup>2</sup> Ursula Cheer “Defamation” in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.3.05].

<sup>3</sup> *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

<sup>4</sup> Statements that a person has committed a criminal offence can be defamatory: Ursula Cheer “Defamation” in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.3.03(3)], citing, among other authorities, *Hinds v Sparks* [1964] Crim LR 717 (QB); *McGee v Independent Newspapers Ltd* [2006] NZAR 24 (HC); and *Barron v Collins* [2015] EWHC 1125 (QB).

*Was the statement about Mr Spring?*

[22] Mr Mason's Instagram post was about Mr Spring. The post included a photograph of Mr Spring, and referred to him by name. There can be no serious argument that Mr Spring was not the subject of Mr Mason's Instagram post.

*Did Mr Mason publish the statement?*

[23] I am satisfied that Mr Mason published the statement. The Instagram account that posted the statement bears Mr Mason's name and photograph. Email correspondence between the parties confirms that Mr Mason made the Instagram post.

[24] Publication must be to some person other than the plaintiff.<sup>5</sup> Publication on the internet is publication for defamation purposes.<sup>6</sup> The plaintiff must show that at least one other person saw, read or heard the communication.<sup>7</sup>

[25] Mr Spring has easily discharged the onus of showing that at least one other person saw, read or heard the communication. The affidavit evidence discloses that Mr Mason's statement has been widely circulated in the New Zealand motor vehicle industry, and that a number of people have been asking questions about the truth of its contents. Further, Mr Mason's Instagram account has more than 900 followers.

*Conclusion on defamation*

[26] Mr Spring has made out his claim in defamation. The ordinary reasonable person would understand Mr Mason's words to impute criminal wrongdoing, in the form of drug dealing and money laundering, to Mr Spring. Mr Mason published the Instagram post, and the post was viewed by others. Mr Mason has not attempted to prove that any of his allegations are true.

[27] It follows that Mr Spring is entitled to a declaration that Mr Mason is liable to him in defamation. I next address what damages Mr Mason should pay to Mr Spring.

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<sup>5</sup> *Powell v Gelston* [1916] 2 KB 615 (KB) at 619.

<sup>6</sup> *O'Brien v Brown* [2001] DCR 1065 at [7.13].

<sup>7</sup> Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.5.02(e)].

## What is the appropriate quantum of compensatory damages?

[28] Assessment of general compensatory damages in defamation is necessarily a subjective exercise, but it must be kept within reasonable bounds.<sup>8</sup> Matters relevant to the assessment include the defendant's behaviour; the seriousness of the defamatory statement; the extent of publication; whether the plaintiff already had a bad reputation; whether the defendant has qualified the original statement or apologised for it; the defendant's state of mind; the plaintiff's conduct; and the terms of any other remedies the court proposes to make.<sup>9</sup>

[29] If a plaintiff has suffered a material loss capable of monetary estimation, such loss is claimable as special damages. Loss of a firm's business is one possible example of special damages.<sup>10</sup> The plaintiff must give particulars, and facts and figures to support the claim.<sup>11</sup> However, if it is clear the plaintiff has suffered monetary loss, but the plaintiff cannot prove special damages with any precision, the plaintiff may be entitled to an increased sum by way of general damages.<sup>12</sup>

[30] Mr Spring referred me to several cases.<sup>13</sup> Of those, he said the present case is most similar to *Hallett v Williams*, which also involved imputations of criminal conduct and involvement with drugs and gangs. Pointing to the award of \$125,000 made in that case, and adjusting for inflation, he said a suitable starting point for general damages here would be \$165,753.09.

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<sup>8</sup> *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [32].

<sup>9</sup> Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.6.01(1)–(3)].

<sup>10</sup> At [16.6.01(2)(a)], citing *Parachutes & Para-Equipment Ltd v Broadcasting Corp of New Zealand* HC Wellington A205/83, 6 August 1985 (damages awarded in respect of loss of profits, actual and anticipated); and *Columbus v Independent News Auckland Ltd* HC Auckland CP600/98, 7 April 2000 (\$175,000 awarded in respect of defamation claim found to have caused a decline in business).

<sup>11</sup> At [16.6.01(2)(a)], citing High Court Rules 2016, r 5.33; *Niven v Poverty Bay Farmers Meat Co* [1917] GLR 119 (SC); and *Lewis v Daily Telegraph Ltd* [1963] 1 QB 340 (CA) at 376.

<sup>12</sup> Matthew Collins *Collins on Defamation* (Oxford University Press, Oxford, 2014) at [21.08] and [21.11].

<sup>13</sup> *Hallett v Williams* HC Auckland CIV-2010-404-7064, 26 July 2011 ("grossly defamatory" allegations of criminal complicity with the Mr Asia drugs syndicate and Black Power; compensatory damages of \$125,000 upheld on appeal); *Low Volume Vehicle Technical Association Inc v Brett* [2017] NZHC 2846 (calling into question the plaintiff's competence and integrity; defamation described as less serious than the allegations of criminal complicity in *Hallett v Williams*; general damages of \$100,000 awarded); *Kim v Cho* [2016] NZHC 1771 (publication of article alleging the plaintiff misappropriated funds for his own benefit; general damages of \$100,000 awarded).



[31] Mr Spring then contended that an uplift to that starting point of \$10,000 would be justified. He said Mr Mason's behaviour had been malicious. Along with the defamatory post, Mr Mason had sent Mr Spring abusive emails and text messages, including threats to email a large number of car dealers with similarly defamatory comments. Mr Spring said Mr Mason's conduct had caused him particular anxiety and distress.

[32] Mr Spring further sought an award of \$256,000 in special damages, corresponding to the pecuniary loss he claims he and Daytona Group Ltd suffered or will suffer from Mr Mason's defamatory statement.

[33] The cases on which Mr Spring relied concerned awards of compensatory damages, not merely of general damages. They therefore do not support his contention that he should be awarded general damages of about \$175,000 with an additional award of special damages of \$256,000.

[34] Further, the evidence that Mr Spring has put forward to support his claim for special damages is rather sparse. Mr Rowe, for instance, does not annex any financial statements for Daytona Group Ltd or for Mr Spring. His estimate of a \$256,000 reduction in annual income assumes that the effect of Mr Mason's defamation will continue through to March 2023. This does not make any allowance for the remedial effect of the declaration and award of damages that I make in this judgment.

[35] That said, I accept that a defamatory statement as serious as that made by Mr Mason will have had a detrimental financial effect on Mr Spring, especially when the statement is directly connected to the industry in which Mr Spring earns his livelihood. In these circumstances, I consider it appropriate to allow for this financial effect by way of general damages.<sup>14</sup>

[36] I accept Mr Spring's submission that Mr Mason's malicious behaviour has caused him additional hurt, and that this justifies a higher award.<sup>15</sup> Mr Mason's

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<sup>14</sup> *Gleaner Co Ltd v Abrahams* [2003] UKPC 55, [2004] 1 AC 628 at [56].

<sup>15</sup> Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.6.01(2)(b)], citing, among other authorities, *Greville v Wiseman* [1967] NZLR 795 (SC) (persistent attacks on plaintiff); *News Media Ownership Ltd v Finlay* [1970] NZLR 1089 (CA) at

defamatory post was very serious, and he has taken no steps to apologise for it. As noted, I am satisfied that Mr Spring has suffered financially from the defamatory statement.<sup>16</sup> Taking all these matters together, my assessment is that an award of \$170,000 in general damages is justified.

**Are punitive damages appropriate, and if so, what is their appropriate quantum?**

[37] Damages in defamation actions tend only to be compensatory; exceptionally awards of punitive damages may be made.<sup>17</sup> Punitive damages are to punish and deter the defendant where the defendant has “acted in flagrant disregard of the rights of the plaintiff”.<sup>18</sup> Accordingly, punitive damages awards will be rare and only justified when there is a need to punish the defendant beyond the award for general damages.<sup>19</sup>

[38] Mr Spring sought punitive damages in the amount of \$50,000. He referred again to *Hallett v Williams*, where \$15,000 in punitive damages was awarded. Again adjusting for inflation, he said the award in that case would equate to \$19,894.22 in today’s terms. And he referred to Court of Appeal authority that a punitive damages award of \$25,000, in the context of a defendant whose persistent defamatory conduct led to his imprisonment for contempt of court, “demonstrated significant restraint”.<sup>20</sup>

[39] Mr Mason, both in publishing the defamatory statement and in his subsequent correspondence with Mr Spring, acted in flagrant disregard of Mr Spring’s rights. But Mr Mason’s conduct, as bad as it was, was less serious than the defendant’s conduct in *Hallett v Williams*. Further, I have already taken Mr Mason’s conduct into account in assessing general damages. Given the award of \$170,000 in general damages, I do

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1100 (unwillingness to compromise when defendant asked to mitigate damage); *Quinn v Television New Zealand Ltd* [1995] 3 NZLR 216 (HC) (defendant defiantly continued to disparage plaintiff); *Baker v Australia & New Zealand Bank Ltd* [1958] NZLR 907 (SC) (failure to apologise); and *CW Wah Jang & Co Ltd v West* [1933] NZLR 235 (SC) (defendant’s malice may be relevant to assessment).

<sup>16</sup> I note that Mr Spring’s financial loss reflects a loss suffered directly by Daytona Group Ltd. I am satisfied that the award of general damages should nonetheless take account of Mr Spring’s loss. It is not necessary or appropriate to explore, in this formal proof, any limits on a shareholder’s ability to recover such reflective losses.

<sup>17</sup> Ursula Cheer “Defamation” in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, 2019) at [16.6.01(4)].

<sup>18</sup> Defamation Act 1992, s 28.

<sup>19</sup> *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [34].

<sup>20</sup> *Siemer v Stiassny* [2011] NZCA 106, [2011] NZLR 361 at [75].

not consider that a further award of punitive damages is necessary to punish Mr Mason. For these reasons, I do not consider I should award punitive damages.

**Result**

[40] Pursuant to s 24(1) of the Defamation Act 1992, I **declare** Mr Mason is liable to Mr Spring in defamation.

[41] I **order** Mr Mason to pay Mr Spring general damages of \$170,000.

[42] I **order** Mr Mason to pay Mr Spring his reasonable disbursements of this proceeding.

A handwritten signature in blue ink, appearing to read 'Neil Campbell', written over a horizontal line.

Campbell J