

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

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

**CIV-2023-404-76
[2023] NZHC 1723**

UNDER A Facebook post
IN THE MATTER of the Defamation Act 1992
BETWEEN NEIL BRINGAS CASTILLO
Plaintiff
AND JERALD HULLEZA YBANEZ (aka
JERALD “WOWIE” YBANEZ)
Defendant

Hearing: 14 June 2023
Appearances: MSP Pang for the Plaintiff
No appearance for the Defendant
Judgment: 5 July 2023

**JUDGMENT OF BECROFT J
[As to formal proof of defamation claim]**

*This judgment was delivered by me on 5 July 2023 at 4pm
pursuant to r 11.5 of the High Court Rules*

Registrar/Deputy Registrar

Solicitors:
Integris Law, Auckland

Introduction

[1] Mr Neil Castillo (Mr Castillo) and Mr Jerald Ybanez (Mr Ybanez) are both Filipino New Zealanders who love basketball.

[2] Their shared basketball passion resulted in them establishing the Auckland United Basketball (AUB) organisation for South Auckland children and young people.

[3] Unfortunately, the pair have fallen out. Mr Castillo claims that Mr Ybanez defamed him on three separate occasions in July 2022:

- (a) First, Mr Ybanez sent a message to the AUB Facebook group chat, which had over two dozen members. Mr Castillo says that in this message Mr Ybanez suggests, or at least implies, that he misappropriated AUB money. This message spread quickly amongst the group, despite it being removed within about half an hour.
- (b) Second, in a Facebook message to a possible sponsor, Mr Eddie Katigbak (Mr Katigbak), which was removed within about 5 minutes. Mr Castillo says Mr Ybanez implies he had dishonest intentions in giving his personal bank account number to sponsors and not the AUB account number.
- (c) Third, in a brief telephone conversation between Mr Ybanez and Mr Katigbak (again), where Mr Ybanez told Mr Katigbak that AUB had been dissolved because Mr Castillo was using AUB to profit from the money provided by parents.

[4] The matter has come before me for formal proof.

[5] I note that Mr Castillo only seeks a declaration under s 24 of the Defamation Act 1992 that Mr Ybanez is liable to him in defamation, together with solicitor/client costs.

Formal proof in these circumstances

[6] I remind myself that allegations of defamation by a member of the community against another are very serious. Equally, any defamation can have serious repercussions for a defamed person's reputation and standing especially within his or her community. The Court must be vigilant, especially in Mr Ybanez's absence, to ensure the allegations are properly proved.

[7] Mr Pang, counsel for Mr Castillo, has assured the Court, consistent with his obligations as an Officer of the Court in formal proof hearings, that there are no known defences available to Mr Ybanez. Mr Pang also says that there are no other relevant witnesses for the plaintiff's case, other than those who have made affidavits for this formal proof hearing.

[8] The onus of proof is on the plaintiff and the standard of proof is on the balance of probabilities.¹

Procedural history

[9] The statement of claim is dated 18 January 2023. It was served on the defendant on 28 February 2023, confirmed by the affidavit of service of 7 March 2023 provided by Mr Jerome Swan. No statement of defence or notice of opposition has been filed. There has been no contact from Mr Ybanez whatsoever.

[10] On 8 May 2023, Campbell J noted that a formal proof hearing was to be allocated on the earliest available date. He directed that Mr Pang file affidavits in support of the formal proof hearing 10 working days prior to hearing.

[11] Affidavits from four individuals, including Mr Castillo, were filed on 7 June 2023.

[12] Campbell J ordered that a synopsis and any authorities be filed five working days prior to the hearing. The synopsis has been received.

¹ *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361 at [49].

[13] On 7 June 2023, Gordon J granted an extension to the timetabling orders that have now been complied with.

[14] Mr Pang, who made careful and methodical submissions, confirmed that he has had no contact with Mr Ybanez after service occurred.

[15] The matter was called in open Court before the formal proof hearing began and broadcast throughout the Court precinct. Mr Ybanez made no appearance.

Background to the allegations

[16] In terms of background, I adopt the summary prepared by Mr Pang as follows:

- (a) Mr Castillo and Mr Ybanez are both active members of the Filipino/New Zealand basketball community.²
- (b) Mr Castillo is the founder of Young Bucks Basketball, a children's basketball team.³
- (c) Mr Ybanez is a key figure in the Filipino/New Zealand basketball community. He holds himself out as an ex-professional basketball player in the Philippines.⁴
- (d) In early 2022, the parties decided to create a basketball team for South Auckland kids together.
- (e) The parties incorporated AUB under the Companies Register.⁵
- (f) Mr Castillo initiated all the administrative tasks required to set up AUB.⁶
- (g) The parties charged AUB members various fees payable to the defendant's personal bank account. Other money was collected for AUB's wider operation and participation in tournaments. At all times,

² Affidavit of Mr Neil Bringas Castillo in support of formal proof dated 9 June 2023 at [5].

³ At [6].

⁴ At [10].

⁵ At [11]–[14].

⁶ At [15]–[16].

the “bank account” of the AUB was the bank account of the defendant. The defendant had exclusive possession and control of the bank account.⁷

- (h) The parents of the children who were members of the AUB paid for training and membership fees. The casual game fees were initially \$10 per training. That was increased to a monthly \$30 fee for AUB trainings. The membership fee was \$81 per term. There were also tournament registration fees.
- (i) The parties sought sponsorship from two separate companies, but none eventuated.

[17] At no time did the plaintiff personally take any money from the parents of the children or from AUB or from the sponsors directly. In any case, Mr Castillo could not have taken money from AUB because the “AUB bank account” was at all times controlled by Mr Ybanez.

[18] As might be expected, given Mr Ybanez’s strong community presence and as a former professional basketball player, the club quickly attracted significant membership.

[19] On or around April 2022, Mr Ybanez registered AUB teams in the “Ganap SA Auckland” tournament to be held between 24 and 25 April 2022. The teams were also entered in the “Auckland Friendship Cup Tournament 2022” to be held on or around 21 May 2022. The registration fees for team participation were significant.

[20] There was a problem with uniforms for the tournament. An overseas supplier in Asia promised to make available a blue and yellow basketball jersey for a purchase price of \$85, to be received from the supplier on or around 9 April 2022. The total amount for the blue and yellow jerseys was \$2,760 (the total amount). Mr Ybanez transferred the total amount from his account to Mr Castillo’s personal bank account.

⁷ At [19]–[20]; Annexures “D” and “E”.

Mr Castillo, in turn, paid the total amount to the supplier in China. In fact, the jerseys were not available in time.

[21] Mr Castillo said in oral evidence that he paid all the money for the blue and yellow jerseys to the Chinese supplier. He said he received more than 50 blue and yellow jerseys some weeks after the tournament. Those who had paid for the jerseys received them. The excess blue and yellow jerseys were kept by AUB and were available for loan to members of the club.

[22] Realising that the club would be short of jerseys for the Ganap tournament, Mr Castillo in his oral evidence said that he ordered grey jerseys, at his own cost, for each player — totalling approximately \$2,000. He never received any reimbursement from AUB for that. Those jerseys, too, were late because they were held up in Customs because of ANZAC Day.

[23] Having had the idea that a sponsor could put its logo on the players' jerseys, Mr Castillo looked for a sponsor. This would raise funds for AUB to reimburse Mr Castillo for the grey jerseys. But in the end no sponsorship was ever finalised. The excess grey jerseys were also kept by AUB and were available for loan to new members of the club or to those who did not have them.

[24] Against this background, the AUB Facebook group chat, "AFC 2020 U15 U13 U11", had been created. It contained at least a couple of dozen members, including parents, players, coaches, and event organisers from various basketball clubs of the Filipino/New Zealand basketball community. Both Mr Castillo and Mr Ybanez were members of the group chat.

[25] On or about 26 July 2022 at 11.29 am, Mr Ybanez sent the following message to the group chat.

Good morning fellow coaches and club owners. This is to inform you that effective immediately, AUB will be dissolved and will no longer be operating as a basketball club. We will however still be finishing the AFC tournament as a commitment to the organisers and kids who have joined the tournament. And also I am no longer affiliated with Kalayaan Matariki and to any future plans they have in line, you can direct contact Neil Castillo and Jose Enrico

Buenaventura. Any concern please direct call my mobile.0275733385.
Maraming salamat sa lahat. God bless.

[26] This was not a mutually agreed decision. In his affidavit, Mr Castillo makes clear that it was a unilateral decision by Mr Ybanez. It came “out of the blue” and shocked Mr Castillo.

[27] On or about 26 July 2022 at 5:22 pm, Mr Ybanez sent several messages to the group chat that directly related to Mr Castillo. These messages constitute the allegations that support the first cause of action.

[28] On or about the 28 and 29 July 2022, Mr Ybanez sent several messages to Mr Katigbak about Mr Castillo. Mr Katigbak had been a potential sponsor of AUB. These messages constitute the second cause of action.

[29] On or about 29 July 2022, Mr Ybanez had a telephone conversation with Mr Katigbak in which he made references to Mr Castillo. This forms the basis of the third cause of action.

[30] As is well-known, a Facebook message may include text or images. Recipients of the message can then react to the message using a variety of emoji symbols, which will then appear at the bottom of the original message.

[31] It is the text of Mr Ybanz messages, set out later in the judgment, that form the subject of the first two causes of action

The law

[32] Mr Castillo must establish the following elements to prove a claim in defamation:

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

[33] I note that under s 2 of the Defamation Act 1992 defamation includes both libel and slander. Under s 4 there is no need to prove the defamation caused special damage. I now unpack those three legal elements in more detail.

What is a defamatory statement?

[34] There is no statutory definition of what constitutes defamation. Instead, guidance can be sought from case law — where the courts have not adopted a single definition for what constitutes a defamatory statement. The authors of Todd on Torts helpfully set out four general definitions that tend to be commonly cited in cases.⁸

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

While all these definitions have the same thrust, there are differences in emphasis between them. A reading of all four together gives a reasonable impression of the nature of the tort. A more accurate appreciation must depend on example.

[35] Mr Pang drew my attention to s 37 of the Defamation Act:

37 Particulars of defamatory meaning

- (1) In any proceedings for defamation, the plaintiff shall give particulars specifying every statement that the plaintiff alleges to be defamatory and untrue in the matter that is the subject of the proceedings.
- (2) Where the plaintiff alleges that the matter that is the subject of the proceedings is defamatory in its natural and ordinary meaning, the plaintiff shall give particulars of every meaning that the plaintiff alleges the matter bears, unless that meaning is evident from the matter itself.

⁸ Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at [16.3.01].

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

¹⁰ *Youssouf v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581 (CA) per Scutton LJ.

¹¹ *Parmiter v Coupland* (1840) 7 M & W 105; 151 All ER 340 at 109, 342 per Parke B.

¹² *Youssouf v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581 (CA) per Slessor LJ.

- (3) Where the plaintiff alleges that the matter that is the subject of the proceedings was used in a defamatory sense other than its natural and ordinary meaning, the plaintiff shall give particulars specifying—
- (a) the persons or class of persons to whom the defamatory meaning is alleged to be known; and
 - (b) the other facts and circumstances on which the plaintiff relies in support of the plaintiff’s allegation

[36] Within the statement of claim, Mr Pang has appropriately provided particulars of the meanings that the alleged defamatory statements bear, pursuant to s 37(2).

[37] I accept Mr Pang’s submission that before a court can say whether words are defamatory, it must decide what the words mean. The test is stated by Lord Selborne in *Capital and Counties Bank Ltd v George Henty & Sons*:¹³

The test ... is whether under the circumstances in which the writing was published, reasonable [people], to whom the publication was made, would be likely to understand it in a libellous sense.

[38] The “reasonable person” is an ordinary person with ordinary general knowledge, not an unusually suspicious or unusually naïve person.¹⁴ A reasonable person does not live in an ivory tower and is not inhibited by a knowledge of rules of construction. The reasonable person “can and does read between the lines in the light of his general knowledge and experience of worldly affairs”.¹⁵

[39] Mr Pang, emphasised the following extract from Todd on Torts:¹⁶

A statement may convey to the ordinary reader more than it expressly states: the words may have overtones and convey inferences which are apparent to the ordinary person without special knowledge. If these overtones and inferences are defamatory of a person, that person will have a cause of action.

In *Grubb v Bristol United Press Ltd* Holroyd Pearce LJ gave a clear example:¹⁷

“If the defendant published of John Smith: ‘His name is certainly not George Washington’ then, however much the defendant may argue that the words were a harmless truism concerned with nomenclature, the natural and ordinary implication of the words is that John Smith is

¹³ *Capital and Counties Bank Ltd v George Henty & Sons* (1882) 7 App Cas 741 (HL) at 745.

¹⁴ *Lewis v Daily Telegraph Ltd* [1964] AC 234 (HL) at 259 per Lord Reid.

¹⁵ At 258.

¹⁶ Stephen Todd, above n 8, at [59.16.3.05].

¹⁷ *Grubb v Bristol United Press Ltd* [1963] 1 QB 309 (CA) at 327.

untruthful; and presumably the jury would find that to be the ordinary meaning of the words.”

The New Zealand Court of Appeal has summarised the “reasonable person” test in the following propositions:¹⁸

- (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 the 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.

The statement must be about the plaintiff

[40] I adopt Mr Pang’s submissions that Mr Castillo has the onus of proving that the alleged defamatory statements were about him. The test is whether a reasonable person would reasonably believe that the statements referred to Mr Castillo. This test was confirmed in *David Syme & Co v Canavan*¹⁹ in Australia (which has since been applied in New Zealand),²⁰ as follows:

Are [the words] such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to?

¹⁸ *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625. See also *Young v Television New Zealand Ltd* [2014] NZCA 50; *McGee v Independent Newspapers Ltd* [2006] NZAR 24 (HC).

¹⁹ *David Syme & Co v Canavan* (1918) 25 CLR 234 at 238 per Isaacs J.

²⁰ *Hyams v Peterson* [1991] 3 NZLR 648 (CA) at 654 per Cooke P.

The statement must be published by the defendant

[41] I accept Mr Pang’s summary as to the relevant law as follows.

[42] The defamatory statement must have been published by the defendant to a person other than the plaintiff. There is no publication if it is made only to the plaintiff.²¹

[43] Publication on the internet is publication for defamation purposes. In *Stocker v Stocker*, an English case, where comments were published on the Facebook page of another person, the defendants lack of awareness that their friends could see it did not excuse the fact of publication. The United Kingdom Supreme Court considered the advent of the 21st century brought with it a new class of reader: the social media user. The judge, tasked with deciding how a social media post would be interpreted by a social media user, had to keep in mind the way in which such postings were made and read. The imperative was to ascertain how an ordinary reasonable reader would interpret the message. That search should reflect the circumstance that it was a casual medium; it was in the nature of conversation rather than carefully chosen expression; and it was pre-eminently one in which the reader read and passed on.²²

First cause of action – defamation on the AUB Facebook group chat

What was published?

[44] On or about 26 July 2022 at 5.22 pm, Mr Ybanez sent the following message to the AUB group chat,²³ which was deleted approximately half an hour later:

“Mr Castillo, I remember that you took the sponsorship money and it was deposited directly into your account. I know it was a large sum of money. If you want to clear this out please send a copy of your bank statement to me. I will be waiting for it”.

²¹ *Powell v Gelston* [1916] 2 KB 615 at 619 per Bray J.

²² *Stocker v Stocker* [2019] 3 All ER 647, see [25], [26], [37], [38], [41], [43], [47], [49], [50] and [63].

²³ Affidavit of Mr Castillo at [57]; Affidavit of Nikko Buenaventura dated 7 June 2023, Annexure “A” at [5]; and Affidavit of Anna Buenaventura dated 7 June 2023, Annexure “A” at [5].

[45] Mr Ybanez then sent an image to the group chat, being a screenshot of a text message between Mr Castillo and Mr Ybanez. The message was deleted approximately five minutes later. Part of the text from Mr Castillo said:²⁴

“If we don’t have funds, we can use the club’s funds”.

[46] There is no independent record of this post. I have relied on the recollection of Nikko and Anna Buenaventura about what the message said, which they set out in their respective affidavits.

[47] Mr Ybanez then sent a third message to the group chat, which was again deleted within five minutes, that stated:²⁵

“Mr Castillo, you know why we had to dissolve the club because you and us have different values. You want to make money from the kids and we don’t, we just want to promote basketball”.

[48] These three messages taken together constitute the first cause of action. The content and accuracy of those three messages were confirmed by the affidavit evidence of Nikko and Anna Buenaventura.

What meaning does Mr Castillo say these words have?

[49] As required by s37(2) of the Defamation Act, Mr Castillo’s statement of claim sets out that these messages, in the ordinary and natural meaning of the words, convey the following meaning:²⁶

- (a) that the plaintiff stole from the account and the members, parents, and children of AUB;
- (b) that the plaintiff created and was involved in AUB to make a personal profit from the members, parents, and children of AUB;
- (c) that the plaintiff is untrustworthy in the Filipino/New Zealand basketball community;
- (d) that AUB had to be dissolved because of the plaintiff’s improper motives and values; and

²⁴ Affidavit of Mr Castillo at [58]; Affidavit of Nikko Buenaventura, Annexure “A” at [6]; and Affidavit of Anna Buenaventura, Annexure “A” at [6].

²⁵ Affidavit of Mr Castillo at [59]; Affidavit of Nikko Buenaventura, Annexure “A” at [6]; and Affidavit of Anna Buenaventura, Annexure “A” at [6].

²⁶ Statement of claim dated 18 January 2023 at [43.1]–[43.5].

(e) that the plaintiff did and does not want to promote basketball.

Were the words used defamatory?

[50] Mr Pang argues that the statements in the first three messages fall squarely within the realm of defamatory statements. The thrust of the argument is that, just as the group chat members would have read the three messages as a continuous statement, given they were all five to ten minutes apart, so too should the Court. It is the cumulative effect of the three messages that the plaintiff says is so damaging.

[51] In the first message, which is addressed to Mr Castillo and directly references him, Mr Ybanez says “I remember you took the sponsorship money and it was deposited directly into your account”. In fact, there is no basis for this.

[52] There was no sponsorship money ever obtained by AUB. The reference to sponsorship money is therefore entirely misleading. The only money deposited into Mr Castillo’s account, was the \$2,760 collected from the parents for the blue and yellow jerseys and paid into Mr Ybanez’s account. It was then deposited by Mr Ybanez, who had sole authority over the account, into Mr Castillo’s account for him to obtain the jerseys for the Ganap tournament.

[53] There is a clear statement in this message that Mr Castillo “took” the sponsorship money which was deposited “directly” into his account. That simply never took place. Not only is it a false statement but it also suggests misappropriation if not theft of money — which is a very damaging allegation. It is coupled with the statement that it was a large sum of money and Mr Castillo was effectively being asked by Mr Ybanez to come clean about it.

[54] The words of the second message (the screen shot) in their natural and ordinary meaning are perhaps less clear. They are without context. That is probably the very point intended by Mr Ybanez, as these words so closely follow the first message. In the context of the first message, the words convey that that Mr Castillo is happy to use AUB money for other than AUB purposes and is inviting Mr Ybanez to join him in doing so. At the very least that is the inference that was intended by Mr Ybanez that readers would draw. In my view, the message was sent so that readers will conclude

that Mr Castillo is prepared to use AUB money for purely personal and improper purposes — which is exactly what the first post suggested.

[55] The third message, confirmed by the Buenaventura's as being word-for-word accurate, includes the words "you" (that is, Mr Castillo), "want to make money from the kids and we don't, we just want to promote basketball". In my view, and I accept Mr Pang's submission on this point, the words of this message in their natural and ordinary meaning convey that Mr Castillo helped create and was involved in AUB to make a personal profit from the members, parents, and children of AUB. That Mr Castillo's motives were selfish, greedy, and for personal profit at the expense of the parents and their children. A simple allegation of wanting to make money from being involved in the club may not be defamatory in and of itself, but it is the additional words "from the kids" which makes this third post so damaging. In my view, Mr Ybanez is not only claiming the moral high ground but also inviting readers, in the context of the preceding two messages, to conclude that AUB was dissolved because of Mr Castillo's willingness to misuse AUB money for personal profit.

[56] I agree with Mr Pang that reading between the lines, or put more directly, drawing inferences that a reasonable person would draw, these three successive messages, clearly constitute allegations of misappropriation of AUB funds by Mr Castillo, if not theft. The first message, in the context of the second and third soon after, mean this is an inevitable conclusion. I point in particular to the assertion that Mr Castillo "took the sponsorship money" and "deposited it into his account" (untrue) and that Mr Castillo needed to "clear this out" (probably intended to mean "clear this up"); coupled with the reproduction of Mr Castillo's comments to the effect that, "if we don't have funds, we can use the club's funds"; and, finally with the comment "you want to make money from the kids and we [Mr Ybanez and his associates] don't, we just want to promote basketball". Taking the messages together, it seems to me it is not a strained or forced interpretation of the words that Mr Ybanez is stating there has been dishonesty by Mr Castillo and a failure to account for money received into the club which amounts to Mr Castillo stealing it. I am satisfied Mr Ybanez's words contain an imputation of criminal conduct.

[57] I also agree that there is a clear inference that Mr Castillo is untrustworthy. This inference would be drawn particularly by the Filipino/New Zealand basketball community who were the readers of the Facebook messages. That, too, is a very damning imputation in terms of Mr Castillo's reputation.

[58] In my view, the ordinary reasonable person would, as a matter of impression, carry away in his or her head after reading the publication, that Mr Castillo is untrustworthy, that he stole from the members of AUB, or at least failed to properly account for money received, and that is why AUB was dissolved.

[59] These three posts also carry the imputation of unfitness for the job of running a club for South Auckland children and young people. Those statements would certainly make people shun and avoid Mr Castillo, particularly those in the basketball community and the Filipino community and potential participants, families, and co-hosts of Mr Castillo's basketball events. It would disincline any families with children and young people with an interest in basketball to associate with Mr Castillo again. That seems very clear, and it is confirmed by the affidavit evidence.

[60] To this point I find that the words clearly carry a defamatory meaning. To the extent that it is necessary, this is well proved on the balance of probabilities.

[61] I am not sure that I accept Mr Pang's submission that another inference from the words used in the messages would be that Mr Castillo did not and does not want to promote basketball. It would still be quite possible to have those motives to promote basketball and to act dishonestly — not that that is the case here.

[62] In the defendant's absence I have considered if there could be any defences available to him. I accept the affidavit evidence that none of what Mr Ybanez said about Mr Castillo either directly or inferentially is true. Accordingly, there can be no defence of truth. On the affidavit evidence, there can be no suggestion of honest opinion - especially as false facts are stated, for example "you took the sponsorship money." Mr Ybanez makes strong positive assertions about what Mr Castillo did — and his statements are not subject to any qualification. Also, there seems no basis upon which Mr Ybanez could assert any privilege. In short, it is my view, that Mr

Ybanez knew exactly what he was saying. The fact that he took down the posts so quickly reinforces that conclusion.

Was the statement about the plaintiff?

Mr Ybanez expressly addressed Mr Castillo, calling him “Neil”, in the first and third messages. In the second message, I accept that Mr Ybanez made clear that these were comments attributed to Mr Castillo. There can be no doubt, that this element is satisfied.

Were the statements published by the defendant?

[63] The statements were published to the AUB Facebook group chat.

[64] I accept the affidavit evidence that Mr Ybanez published the statements from his personal Facebook account onto the Group Chat. I accept Mr and Mrs Buenaventura’s affidavit evidence that they saw each of the group chat messages on Mr Castillo’s phone, and that they were from Mr Ybanez. I accept that the messages, although subsequently deleted by Mr Ybanez, were independently sent to them by others in the group chat and also by those outside the group as part of other group chats who had obviously seen the messages and had been discussing them.

[65] In two of the three messages, Mr Ybanez specifically begins by using Mr Castillo’s first name (Neil). I have considered the possibility that Mr Ybanez thought that he was sending a private message to only Mr Castillo, hence his takedown within about thirty minutes. If that had been the case, he could easily have said so and apologised. For similar reasons, I do not accept that Mr Ybanez could have accidentally sent these messages. On the balance of probabilities, my inevitable conclusion is that Mr Ybanez knew this was the AUB group chat, he used it deliberately, and that the takedown was the result of him realising he had misused the chat and what he said about Mr Castillo went much too far. This element of defamation is proved.

Conclusion as the first cause of action

[66] In my view, the first cause of action succeeds.

[67] Mr Castillo is entitled to the declaration that he seeks under s 24 of the Defamation Act that Mr Ybanez is liable to him in defamation. While the statement of claim seeks nothing more than this general declaration, it will be meaningless, without the context and specificity of what was said.

[68] The formal declaration I make is that Mr Ybanez is liable to Mr Castillo in defamation because, on or about the 26 July 2022, he falsely stated or implied in messages sent to the Auckland United Basketball Facebook group chat, “AFC 2020 U15 U13 U11”, that Mr Castillo:

- (a) misappropriated or stole AUB funds from the AUB account;
- (b) created and was involved in AUB to make personal profit from the children who were members;
- (c) is untrustworthy in the Filipino/New Zealand basketball community; and
- (d) had improper motives and values which were the reason AUB had to be dissolved.

Second cause of action

What was published?

[69] On about 28 July 2022, two days after the three messages comprising the first cause of action, Mr Ybanez sent a Facebook message to a possible sponsor, Mr Katigbak. It is helpful replicate the message exchange between Mr Ybanez and Mr Katigbak below:²⁷

Mr Ybanez: Bro that’s AUB account not his personal down below is the \$2,760 that AUB gave to him for China uniform paid by parents who join the tournament.

Eddie: Thanks bro, See you on Sunday. What’s the address and time?

Mr Ybanez: He blocked me in our account that’s how bad he is.

Mr Ybanez: He does not want me to talk to you.

Mr Ybanez: Because he have bad intentions (sic)

²⁷ Affidavit of Mr Castillo at [65], Annexure “K”; Affidavit of Eddie Katigbak, Annexure “A” at [10].

Mr Ybanez: That's his personal account number that he gave to sponsor not for AUB club.

Mr Ybanez: That one in the statement that's it.

[70] Mr Ybanez's message included one image, being a screenshot of the AUB account, showing a transaction of \$2,760 from that account to Mr Castillo's account. This is set out in Mr Katigbak's affidavit at [7].

[71] During the formal proof hearing I became aware that the messages replicated above were sent in the Tagalog language of the Philippines. It had been later translated into English. See Annexure K in Mr Castillo's affidavit. I asked who provided the translation. The answer was Mr Castillo himself. I suggested that Mr Castillo should give evidence about this as I was uneasy that the plaintiff could construct his own version of what was said without independent verification.

[72] On oath in Court, Mr Castillo's evidence was that he is fluent in Tagalog, another Filipino dialect called Ilocano, and English. He stated he has a very good command of Tagalog, and he clearly has a good command of English. He confirmed that he had provided the translation of the Facebook message to Mr Katigbak.

[73] He explained to me, in respect of the fourth text in the series, how he concluded that the words "bad intentions" were a proper translation of the Tagalog language. For instance, he said "hangarin" meant intentions and "masama" meant bad and it was a legitimate and proper translation.

[74] I was hesitant to accept that evidence. The Court should not be in the position of having to accept the plaintiff's translation of the meaning of the statement without independent verification. However, on the balance of probabilities, I conclude I can rely on Mr Castillo, and I accept his evidence as an accurate translation of the messages for these reasons:

- (a) This is a formal proof hearing. The defendant can be taken to have seen the English translation (at [59] of the statement of claim). He has not disputed it.

- (b) Mr Castillo was very compelling in his evidence, and he demonstrated knowledge of the English and Tagalog languages. He explained very precisely some of the words and their meaning in Tagalog and English. I formed the view that I could trust his ability to translate these messages.
- (c) I have accepted his other evidence as to what others have said to him, without independent verification, so there is no reason in principle to treat his situation any differently.
- (d) What he has translated is roughly consistent with the other statements proved to have been made by Mr Ybanez in English about this matter.

What meaning does Mr Castillo say these words have?

[75] In Mr Castillo’s statement of claim, the Facebook messages sent by Mr Ybanez to Mr Katigbak taken in the natural and ordinary meaning of their words, convey the following meaning:²⁸

- (a) that the plaintiff stole from the account and the members, parents, and children of AUB;
- (b) that the plaintiff created and was involved in AUB to make a personal profit from the members, parents, and children of AUB;
- (c) that the plaintiff had “bad intentions” in his involvement in AUB; and
- (d) that the plaintiff is untrustworthy in the Filipino/New Zealand basketball community.

Were the words used defamatory?

[76] The first thing to say is that the opening three lines of the messages are true. The AUB account (controlled by Mr Ybanez) was the account from which \$2,760 was paid into Mr Castillo’s personal account for Mr Castillo to buy the yellow and blue jerseys. Mr Castillo’s bank account, which was included in the message, shows this. And Mr Castillo did purchase the jerseys. There is no problem with any of this.

²⁸ Statement of claim dated 18 June 2023 [60].

[77] Nevertheless, Mr Pang relies on the combined effect of all those various messages, sent one after the other. But Mr Pang faces insurmountable problems with most of this cause of action. The words relied upon, set out in the statement of claim at [60] and included in this judgment, in their natural and ordinary meaning simply do not convey all of the meanings contended for.

[78] At [60.1], there is the claim that the words as a whole mean that Mr Castillo stole \$2,760 from AUB. That is unsustainable. Plainly, they do not have that meaning. There are additional private messages from Mr Ybanez to Mr Katigbak in the affidavits that would establish that meaning but the posted words set out in the statement of claim do not even remotely suggest theft by Mr Castillo. Mr Pang asked if I would amend the statement of claim to include more words allegedly said by Mr Ybanez to Mr Katigbak. I refused to do so given that this is a formal proof hearing. Any reasonable defendant might well conclude that the words in the statement of claim for this cause of action did not support a defamatory meaning of theft and did not warrant a response. If words were included in the claim which amounted to allegations of theft, (which were much more serious than set out in the statement of claim) Mr Ybanez might have responded. I offered Mr Pang the opportunity to amend the statement of claim and re-serve it. He declined to do so.

[79] The same applies to the second ordinary and natural meaning alleged, that is, that Mr Castillo created and was involved in AUB to make a personal profit from members, parents, and children of AUB. The words relied upon do not say that nor is it an available inference.

[80] However, what follows, in combination, does amount to a clear imputation that Mr Castillo is untrustworthy, which clearly lowers his reputation in the eyes of members of the community, such as Mr Katigbak — a potential sponsor of AUB.

[81] There is the comment in the message to Mr Katigbak that Mr Castillo “blocked” Mr Ybanez “in our [their] account.” I accept that Mr Castillo cannot block Mr Ybanez in the AUB account because the AUB account was only Mr Ybanez’s account, over which he has complete control. So that statement is false. And it

concludes with the words "...that's how bad he is." They are not words of ringing character endorsement.

[82] Mr Ybanez goes on to say that Mr Castillo has "...bad intentions." And as if to exemplify these "bad intentions" Mr Ybanez says that Mr Castillo has given his own personal account number to a sponsor, not the AUB account (controlled by Mr Ybanez). That suggests, following the previous words, that Mr Castillo is intending to pocket the money for his own gain.

[83] Taking all the later statements together, their combined effect, if not on their face, then certainly legitimately reading between the lines, is that Mr Castillo is untrustworthy and dishonest in his role within AUB. In my judgement these words are clearly defamatory, and are established as being so at least to the standard of the balance of probabilities.

[84] For what it is worth, Mr Ybanez's messages made Mr Katigbak think that Mr Castillo was untrustworthy and caused him to question his sponsorship decision. Perhaps unsurprisingly, Mr Katigbak did not proceed with the sponsorship of AUB.

Was the statement about the plaintiff?

[85] I accept Mr Katigbak's affidavit evidence that Mr Ybanez statements were about Mr Castillo.

Were the statements published by the defendant?

[86] I accept that Mr Ybanez published those statements in his message to Mr Katigbak.

Conclusion as the second cause of action

[87] The second cause of action succeeds.

[88] Mr Castillo is entitled to the declaration that he seeks under s 24 of the Defamation Act that Mr Ybanez is liable to him in defamation. While the statement of claim seeks nothing more than this general declaration, again, it will be meaningless, without the context and specificity of what was said.

[89] The formal declaration I make is that Mr Ybanez is liable to Mr Castillo in defamation because, on or about the 28 July 2022, he falsely conveyed to Mr Eddie Katigbak in a Facebook message conversation with him, that Mr Castillo was untrustworthy and dishonest in his role within AUB.

Third cause of action

What was published?

[90] The third cause of action focuses entirely on a telephone conversation between Mr Ybanez and Mr Katigbak, which took place on 29 July 2022. Mr Katigbak called Mr Ybanez. Mr Katigbak confirmed by affidavit that “I called Jerald [Mr Ybanez] to confirm the monies to be transferred to AUB as to my intended sponsorship of the basketball club.” Mr Ybanez said in response that:

“AUB had been dissolved because Mr Castillo was using the club to gain profit from the parents’ money”.

[91] I assume, there being no evidence to the contrary, that this conversation was in English.

What meaning does Mr Castillo say these words have?

[92] Mr Castillo claims the statement made by Mr Ybanez in the telephone conversation, taken in its natural and ordinary meaning of the words, conveys the following meaning:²⁹

- (a) that Mr Castillo created and was involved in AUB to make a personal profit from the members, parents and children of AUB;

²⁹ Statement of claim dated 18 January 2023 at [76].

- (b) that Mr Castillo is untrustworthy in the Filipino/New Zealand basketball community; and
- (c) that AUB had to be dissolved because of Mr Castillo's improper actions, motives, and values.

Were the words used defamatory?

[93] The context for this conversation is that Mr Castillo had previously contacted Mr Katigbak regarding sponsorship for AUB and Mr Katigbak had agreed to provide \$3,000 in sponsorship. Mr Katigbak knew that it was "Neil's basketball team." As a result of this phone call, and the Facebook conversation in the second cause of action, Mr Katigbak cancelled the proposed sponsorship deal.

[94] In my view, taken in their ordinary and natural meaning, the words in this telephone conversation convey that Mr Castillo was involved in AUB to make personal profit from the parents and children of AUB, and that this caused the closure of the club. The inference is that this was the only way to stop his behaviour. Again, as with the second cause of action, this is hardly a ringing endorsement of a person's character. I accept, given the affidavit evidence, that all these imputations are false. I add that there may be nothing defamatory in saying that someone is making a profit from the running of a club, although that might be worrying. But in context, the comments here go much further than that. And the inference that Mr Ybanez wants Mr Katigbak to draw is that Mr Castillo is motivated by greed and is using the club simply to make money for himself.

[95] The first three meanings contended for by the plaintiff are generally substantiated. I accept that it is the clear inference to be drawn from this telephone conversation. In my judgement the comments are defamatory. And they are established as such on the balance of probabilities. However, I do not think that the fourth meaning contended for — that Mr Castillo does not want to promote basketball — is an inference that can safely be drawn. As mentioned previously, the negative imputations as to Mr Castillo's character do not exclude the possibility that he still wishes to promote basketball at the same time.

Was the statement about the plaintiff?

[96] I accept Mr Katigbak's affidavit evidence that he had the very conversation described with Mr Ybanez. From that evidence it is clear that Mr Ybanez was talking about Mr Castillo.

Was the statement published by the defendant?

[97] The telephone conversation with Mr Katigbak constitutes publication, even though it was only made to a single person.

Conclusion as the third cause of action

[98] The third cause of action succeeds.

[99] Mr Castillo is entitled to the declaration that he seeks under s 24 of the Defamation Act that Mr Ybanez is liable to him in defamation. While the statement of claim seeks nothing more than this general declaration, as for the first two causes of action it will be meaningless, without the context and specificity of what was said.

[100] The formal declaration I make is that Mr Ybanez is liable to Mr Castillo in defamation because on or about the 29 July 2022 he falsely conveyed to Mr Eddie Katigbak in a telephone conversation with him, that Mr Castillo was:

- (a) involved in AUB to make a personal profit from the parents' money;
- (b) untrustworthy in the context of his involvement of the Filipino/New Zealand basketball community; and
- (c) the cause of the dissolution of AUB because of his improper actions and motives.

Mr Castillo - summary

[101] If it is not already clear in this judgement, I spell out the following. I accept the affidavit evidence from Mr Castillo that at no time did he seek to make a profit from his involvement in AUB. At no time did he seek to make a profit from the

members, parents, and children of AUB. On the contrary, he has demonstrated a genuine commitment to the Filipino/New Zealand basketball community and the children of AUB. I accept that at no time did Mr Castillo's actions or values cause the dissolution of AUB. And that at no time did he act or fail to act in a manner that was contrary to the promotion of basketball.

[102] I also accept that he never stole \$2,760 from AUB. In fact, he used that money to purchase jerseys from China which were eventually received by AUB. He never stole money from parents and/or children involved in AUB. He never took any sponsorship money. He made no profit from any involvement in AUB. Indeed, he used personal funds at one stage to purchase the grey jerseys so that the club members were able to participate in the 24/25 April 2022 tournament. He has never been repaid. That is very much to his credit.

[103] I also accept that the defamatory statements I have found to have been made, have had a significant impact on his reputation. To a degree he has been shunned by members of the Filipino/New Zealand basketball community. Numbers in his basketball camps have declined. For instance, on 31 September 2022 he conducted a basketball camp and, based on parents' feedback, approximately half of the expected enrolments occurred.

[104] I accept the Filipino/New Zealand community is a small one. The gossip that has ensued from the defamatory statements, spread like wildfire, and has significantly affected the way that he does business to this day.

Conclusion

[105] I make a formal declaration under s 24 of the Defamation Act 1992 that Mr Ybanez is liable to Mr Castillo in defamation. The basis for that declaration arises in respect of the three causes of action that are substantiated in this judgment. The context and specific detail of the declaration, effectively three declarations, are set out at [68], [89], and [100] above.

[106] Where a declaration has been made under s 24, a plaintiff is ordinarily entitled to receive solicitor and client costs (indemnity costs) — which is what Mr Pang seeks. A memorandum as to costs is to be filed. Mr Pang has indicated that he expects that the solicitor/client costs will be close to scale 2B or 3C costs. I direct that Mr Pang makes it very clear what costs are sought by Mr Castillo. In my view this is not a matter where there is a blank cheque to pay solicitor/client costs.

Becroft J