IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2021-404-1761
[2024] NZHC 2825

BETWEEN	KHIENG CHIV Plaintiff
AND	SANDY ZHUJUN DAI Defendant

Hearing:	19 February 2024 (with further submissions received 5, 19 and 25 March 2024)
Appearances:	A J Romanos for Plaintiff Defendant in person
Judgment:	30 September 2024

JUDGMENT OF MOORE J

This judgment was delivered by me on 30 September 2024 at 3.00 pm,
Pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: ……

Solicitors:
Maude & Millar, Wellington

Introduction

[1] The plaintiff and the defendant were once both chartered accountants. They practised in different cities. A bakery business which had once used the defendant's professional services decided to switch accountants and use the plaintiff's services. The defendant did not like this. She attempted to dissuade the bakery business from doing so by sending its owners a message which was critical of the plaintiff, attacking him both professionally and personally.

[2] The plaintiff wrote to the defendant telling her that her allegations were false, defamatory and without any evidential foundation. He told her that they were made for the purpose of persuading the bakery owners to keep her services. The plaintiff invited the defendant to respond in order to avoid litigation.

[3] Instead, the defendant sent a further message to the clients in broadly similar terms. The plaintiff thus sues in defamation.

Background

[4] The plaintiff, Khieng Chiv, practises as an accountant, trading as CWK Accountants. Mr Chiv is ethnically Cambodian, although his South Auckland client base is broad, drawing from various ethnic groups. He uses Kevin as his English first name.

[5] In early to mid-2021, Mr Chiv was approached by a Cambodian couple, Mr H and his wife, Ms C. Mr H and Ms C ran a bakery business on Auckland's North Shore ("the Bakery"). They had purchased it a year or so prior. In doing so they inherited the accountant used by the previous owners. This was the defendant, Sandy Dai. Ms Dai was a Wellington-based accountant trading as "Synergy Accounting" through her company, Synergy New Zealand (2018) Limited ("Synergy").[1]

[6] Mr H and Ms C engaged Mr Chiv as they decided that they needed to change accountants. It appears that the decision to change accountants was influenced by

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[1] Ms Dai is the principal of Synergy New Zealand (2018) Limited. Its registered office is situated in Woodbridge, Wellington.

several factors including a degree of dissatisfaction with Ms Dai's increasing fees, the inconvenience of having a Wellington-based accountant and the desirability of having their financial affairs attended to by a fellow Cambodian speaker. And so it was that they turned to Mr Chiv.

[7] In order to contextualise the narrative which follows it is necessary to set out something about Mr Chiv and his professional status.

[8] On 15 July 2019, Mr Chiv admitted five charges before the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants ("the NZICA Tribunal" and "NZICA", respectively). The NZICA is the regulator of the New Zealand members of Chartered Accountants Australia and New Zealand ("CAANZ"), the representative body for such professionals in Australia and New Zealand.

[9] Mr Chiv's charges were for misconduct in a professional capacity; conduct unbecoming; supplying information to the NZICA that was false or misleading; negligence or incompetence in a professional capacity of such a degree as to bring the profession into disrepute and for breaching NZICA's rules and/or Code of Ethics.

[10] On 6 November 2019, the NZICA Tribunal ordered that Mr Chiv be suspended from membership of the NZICA for a period of two years and made other orders in relation to Mr Chiv's Certificate of Public Practice. It also ordered that Mr Chiv pay costs in the sum of $31,500 and directed that its determination be published in the official publication "Acuity" and on the CAANZ website with mention of his name and locality.

[11] On 19 November 2019, Mr Chiv filed an appeal against penalty with the NZICA's Appeals Council ("NZICA Appeals Council"). He advanced two principal grounds:

(a) that his conduct was not as serious as the conduct of the appellant in the High Court disciplinary case of *Roberts v A Professional Conduct*

Committee of the Nursing Council of New Zealand,[2] which involved a nurse forming a relationship with a patient; and

(b) that any period of suspension should be confined to the minimum period required for his rehabilitation and that to impose any greater length of suspension would be contrary to the principles discussed by the High Court in *Roberts*.

[12] Mr Chiv argued that a six-month period of disqualification would have been appropriate.

[13] The NZICA Appeals Council rejected that argument and, in particular, Mr Chiv's reliance on *Roberts* as a reference point. It stated:[3]

> [14] This case, however, has nothing to do with an inappropriate sexual relationship between Mr Chiv and his clients. There is no proper comparison between the conduct of the appellant in *Roberts* and the types of conduct which have given rise to the imposition of a penalty in this case. We also note that the *Roberts* case referred to a different profession, with a different penalty regime and different considerations when considering the relationship between the professional and the client.

[14] The Appeals Council also rejected the submission that the appropriate period of suspension should have been six months. The appeal against penalty was dismissed.

[15] The suspension had the effect of prohibiting Mr Chiv from holding himself out as a member of CAANZ and as a chartered accountant or from undertaking any functions requiring certification by a chartered accountant such as auditing. However, the suspension did not, nor could it, prevent him from undertaking general accounting and bookkeeping work for his clients or providing professional services as a tax agent.[4]

[16] Mr Chiv was also at one time registered as a licenced immigration advisor. He offered immigration services under the banner of his company, New Zealand Success

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2 *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.

3 *Chiv v The Professional Conduct Committee of The New Zealand Institute of Chartered Accountants* 12 March 2020, New Zealand Institute of Chartered Accountants Appeals Council.

4 A determination of the NZICA Tribunal against Ms Dai herself confirms this: *Re Dai* 21 November 2022, Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants at [50].

Immigration Limited. In 2019, the Immigration Advisors Complaints and Disciplinary Tribunal upheld a complaint against him.[5] It found that he had committed multiple breaches of the Licensed Immigration Advisers Code of Conduct 2014. These breaches included failures to exercise diligence and due care in filing visa applications; failing to give clients the opportunity to review their draft visa applications; unlawfully delegating the bulk of his client engagement to unlicenced staff and for breaching requirements of client confidentiality.

[17] In a later penalty decision, the Tribunal censured Mr Chiv, fined him $7,000 and prevented him from reapplying as a licenced immigration provider for a period of one year.[6] It also ordered that he be prevented from reapplying until he had enrolled and recompleted the Graduate Certificate in New Zealand Immigration Advice.

[18] These two disciplinary proceedings against Mr Chiv provide the backdrop to what happened next.

[19] Having decided he and Ms C wanted to change accountants for the Bakery, Mr H advised Ms Dai of their decision to change accountants.[7]

[20] Mr Chiv followed this up on 12 April 2021 when he wrote to Ms Dai. He advised that he had been approached by Mr H to attend to the Bakery's accounting and taxation affairs. He asked Ms Dai to advise if there were any professional reasons why he should not accept "the assignment". In the event there was no such impediment, Mr Chiv asked Ms Dai to provide various documents including the financial statements of the company for 2020, a trial balance, GST working papers and any other accounting records. There is no evidence Ms Dai replied to Mr Chiv or acknowledged his correspondence in any way.

[21] About a fortnight later, on 25 April 2021, Mr H sent Ms Dai another communication. This was an email advising that the Bakery had engaged an Auckland accountant and would not be using Synergy's services any further. Mr H and Ms C instructed Ms Dai to update the Bakery's taxation and financial records up to 31 March

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5 *Immigration New Zealand v Chiv* [2019] NZIACDT 73.
6 *Immigration New Zealand v Chiv* [2019] NZIACDT 78.
7 This letter/email was not adduced in evidence.

2021, and then forward the Bakery's file to Mr Chiv.[8] According to Mr H, he told Ms Dai not to undertake any further work beyond the end of the financial year.

[22] Ms Dai sent a text message to Mr H the same day. She wrote:

> Hi [Mr H],
>
> Thanks for your email.
>
> I understand the requirements to gain a Certified Public Practitioner accreditation.
>
> I don't believe that your new accountant is a CA to begin with.
>
> I will complete your 2021 end of year accounts first, meanwhile, I will wait for his updated list of information.

[23] Mr H replied almost immediately:

> To me I think he useless but I always fight with my wife every time she believe her friends too much never listen to me so now I let her understand for choosing the wrong accountant I'm very sorry Sandy. Thanks so much for looking after us…

[24] Mr H explained in his evidence at trial that his negative comments about Mr Chiv were incorrect and, effectively, designed to appease Ms Dai.

[25] Ms Dai responded by advising Mr H and Ms C that she would not be forwarding the file to Mr Chiv. Instead, she continued to provide professional services for the Bakery and continued to invoice the business. Consistent with their instructions to Ms Dai, Mr H and Ms C paid Ms Dai for the work undertaken up to the end of the 2021 financial year, but refused to pay the invoices rendered beyond that, being for April, May and June 2021.

[26] Ms Dai responded by commencing recovery proceedings against Mr H and Ms C in the Disputes Tribunal. According to Mr H, this caused him and his wife considerable distress. Not only were they concerned by the implications Ms Dai's actions might have on their credit rating, but they were also unfamiliar with the processes of the Tribunal. Mr H said that they made "many more payments" to

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[8] This was pleaded by Mr Chiv. Ms Dai admitted receipt of an email on that date but otherwise denied this pleading.

Synergy following Ms Dai's threat that their credit rating would be damaged. They also invested considerable time and energy into preparing their defence for the Disputes Tribunal hearing. They were ultimately successful when judgment was given in their favour in a decision released on 1 October 2021. The Disputes Tribunal found that Synergy had no legal basis for undertaking the Bakery's work after 1 April 2021 and should have ceased all work from that point.[9]

[27] Ms Dai unsuccessfully applied for a re-hearing on the basis, inter alia, that the Bakery had made "a frivolous counterclaim" and "…was frivolous and malicious, [and Mr H's] newly appointed accountant can't be a Tax Agent". The Disputes Tribunal noted that Ms Dai's opinion on the Bakery's conduct and its newly appointed accountant's tax status were matters she had raised at the hearing and ruled they were irrelevant to both the claim and the application for a rehearing.[10]

[28] In the meantime, the correspondence to Mr H from Ms Dai continued. On 19 July 2021, Ms Dai emailed Mr H. It is the contents of this communication which founds the first cause of action. For completeness, the text of the email is reproduced in full below, including the portions highlighted by Ms Dai:

> Hi [Mr H],
>
> Thanks very much for your email.
>
> I have outlined my responses in order, as below:
>
> 1. Your "newly appointed" accountant, Mr Chiv, is banned from trading by the CAANZ, CPA and Immigration New Zealand, with harsh fines and an order to regain his academic degree.
>
> Notes for your attention:
>
> 1. Having **inappropriate sexual relationships** with his female clients;
>
> 2. Providing misleading/false information to CAANZ.
>
> 2. **Following the published disciplinary actions by the CAANZ, CPA and Immigration NZ**, your accountant **is no longer qualified to act**

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9 *Synergy New Zealand (2018) Limited v East Coast Bakery Café Limited* Disputes Tribunal CIV-2021-085-489, 1 October 2021.

10 *Synergy New Zealand (2018) Limited v East Coast Bakery Café Limited* Disputes Tribunal CIV-2021-085-489, 22 October 2021.

as a Tax Agent because his conduct significantly impacts the integrity of the IRD system.

3. Please refer to the attached email concerning the subsequent invoice you owe.

Synergy Accounting has acted diligently in reliance on the signed service agreement to act as your tax agent. Also, Synergy Accounting has informed you of your GST arrears for May 20210 [sic].

2021 Draft Accounts

Your drafts were released to you for review on the 1st of June 2021 (see the attached email). I confirm that Synergy Accounting did not complete the work because you did not respond. The content in your letter is not correct and it is impossible to follow your instruction to "complete" the accounts.

What can you do?

You owe Late Payment Penalties to Synergy Accounting concerning your April 2021 invoice payment. You also owe Accountancy fees for the fee as attached. This is a fee dispute that you should go to the Dispute Tribunal to resolve this issue.

I believe that this concludes your letter.

Below are a few screenshots concerning the published punishment on your accountant.

[29] The screenshots referred to are also relied on by Mr Chiv as forming part of his first cause of action. They include magnified, but incomplete, extracts taken from the NZICA Appeals Council's decision where *Roberts* was discussed. In that context Ms Dai highlighted in yellow the words "between Mr Chiv and his clients". She also attached a page comprised of incomplete cut and paste extracts taken from the results paragraphs of the Immigration Advisors Complaints and Disciplinary Tribunal's sanctions decision and the first two paragraphs of the NZICA Appeals Council's decision which summarised the NZICA Tribunal's findings and orders.

[30] Mr H forwarded this email to Mr Chiv. Unsurprisingly, Mr Chiv was deeply offended, particularly by the reference to having inappropriate sexual relationships with clients. He decided to write to Ms Dai in an attempt to stop her from "making wild accusations about [him] and to stop [her] harassing [Mr H] and [Ms C]". Attached to his letter was a draft statement of claim which he said would be filed if she continued her actions. In evidence, Mr Chiv said that he felt he had no other option but to adopt this course and claimed that Ms Dai had repeated her accusations to others

such as the Bakery's previous owners. The relevant parts of Mr Chiv's letter to her of 6 August 2021 are reproduced below:

> I have seen recent emails you have sent to [Mr H] and [Ms C] concerning me. Your emails are largely false and are defamatory.
>
> I enclose a draft statement of claim. It has not yet been filed but if I have not heard from you by close of business on Friday, August 13, 2021 I will file the statement of claim in the High Court. My reason for the High Court is that the level of damages is likely to exceed $200,000, which exceeds the jurisdictional limit for the district court.
>
> I also point out you have accused me of having inappropriate sexual relations with my female clients. You have not specified which female clients but your use of the word 'clients' refers obviously to more than one. Your statement is untrue, is made without there being any evidence at all to support it and is made for the purpose of forcing people to use your professional services. For a professional, that is disgraceful. It has the potential to see [you] sanctioned and even suspended. If you and I are unable to resolve this issue I will refer the matter to CAANZ by way of formal complaint.
>
> It is not for me to advise you but you may wish to get legal advice on this matter. You may also wish to advise whoever provides your professional indemnity insurance.
>
> I invite you to get whatever advice you consider appropriate. I am prepared to resolve this matter without legal action or complaint, and, to that end, I look forward to hearing from you or your agent, before 5 pm on Friday 13th August 2021.
>
> Yours Sincerely,
>
> Khieng CHIV

[31] Mr Chiv did not email the letter directly to Ms Dai. Instead, he got Mr H to do so. Mr H emailed Mr Chiv's letter to Ms Dai at 2:15 pm on 6 August 2021. Eleven minutes later, at 2:26 pm, Ms Dai replied to Mr H. Her unrepentant response founds the second cause of action. It is reproduced in full below.

> Hi [Mr H],
>
> I find Kevin may have a delusional state of mind.
>
> 1. I refer to the first attachment (CAANZ ChivK_Appeals), page 4, paragraph 14 to confirm the CAANZ's finding of **having sexual relationships with his female clients;**
>
> 2. I refer to the second attachment (CAP), to confirm "***Mr Chiv is not eligible for re-admission until 6 October 2022***. *If Mr Chiv is*

providing Public Accounting Services, he ***must provide evidence of a Public Practice Certificate*** *from either CAANZ or CAP Australia."*

I think Kevin should seek psychiatric treatment. Consulting his GP would be a good start. But he does need support from his friends and families, which I cannot help much with.

I hope this helps!

I also refer to the attached file to confirm that Kevin is still falsely declaring himself as a CA; this will be subject to further disciplinary actions by CAANZ.

Kind Regards,

Sandy Dai

Sandy Dai
QSA, CPP, CA, BCom, Managing Director/Synergy Accounting

[32] As with the earlier correspondence, Ms Dai attached documents including the entire NZICA Appeals Council's decision. Paragraph 14, to which Ms Dai referred in her email, is reproduced earlier in this judgment at [13]. It refers to *Roberts*. As can be seen, paragraph 14 says nothing about a finding that Mr Chiv was having sexual relationships with female clients. Indeed, it expressly states that Mr Chiv's case had nothing to do with an inappropriate sexual relationship between Mr Chiv and his clients.

[33] The final part of this narrative is that on 5 September 2021, Mr Chiv made a complaint against Ms Dai to the NZICA. He attached copies of the email exchanges with Ms Dai including the emails of 19 July 2021 and 6 August 2021. Mr H and Ms C also laid complaints. Two unrelated complaints from former clients of Ms Dai's were included as were three charges laid by the Professional Conduct Committee, NZICA's prosecutor.

[34] On 21 November 2022, the Tribunal delivered its decision. In respect of the complaints made by Mr Chiv, Mr H and Ms C, the Tribunal unanimously determined that Ms Dai's conduct towards Mr Chiv and her former clients was "… not only unprofessional but at times disgraceful".[11] It said:[12]

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11 *Re Dai*, above n 4, at [162].
12 At [162].

> [Ms Dai's conduct] displays an attitude variously of vindictiveness and a lack of self-control, evidently brought on when a client chooses not to continue with the Member's services. This pattern is most evident in the Member's conduct giving rise to the complaints by [Mr H, Ms C, Mr Chiv and a former client not connected with these proceedings].

[35] The Tribunal directed that Ms Dai should be struck off the Register of Members. It said this penalty most appropriately reflected the need to protect and maintain professional standards, was consistent with similar cases and was "the least restrictive" penalty reasonable to impose in the circumstances.[13] It also ordered costs and disbursements totalling over $118,000.[14]

Evidence at trial

[36] The plaintiff's evidence in chief took the form of a brief of evidence which was confirmed as true and correct and supplemented orally. For Mr H, a "will say" statement was produced, confirmed as true and correct and orally supplemented in chief and in cross-examination. No other witnesses were called. The plaintiff filed a bundle of documents.

[37] Ms Dai did not produce a formal written brief. Instead, she filed two substantial bundles entitled "Defendant's Bundle of Authorities" and "Defendant's Bundle of Documents". The former contained material some of which Ms Dai relied on including Court and Tribunal decisions relating to Mr Chiv. The latter contained various other documents which included Ms Dai's affidavit of 27 June 2023 which Associate Judge Gardiner directed could be used by the defendant for the purposes of the trial.[15] The Judge also directed that a memorandum filed by the defendant on 1 August 2023 could be used by her as evidence.[16] Ms Dai supplemented these evidential sources by oral testimony, both in chief and in cross-examination.

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13 *Re Dai* 30 January 2023, Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants at [17].

14 At [30].

15 *Chiv v Dai* HC Auckland CIV-2021-404-1761, 12 September 2023 (Minute of Associate Judge Gardiner).

16 The Associate Judge appears to have misidentified the memorandum as an affidavit. However, any evidential or procedural deficit was cured by Ms Dai adopting both documents on oath.

Applicable principles

[38] The ingredients of the tort of defamation are threefold. A plaintiff must establish:[17]

(a) that a defamatory statement was made;

(b) that the statement was about them; and

(c) that the statement was published by the defendant.

[39] A defamatory statement is one that tends to adversely affect a plaintiff's reputation in a more than minor way.[18] It is one that tends to lower someone in the estimation of right-thinking members of society;[19] that is calculated to injure the reputation of another by exposing them – without justification – to hatred, contempt or ridicule;[20] or which tends to make others shun or avoid them.[21] But while damage to reputation is presumed to occur on publication, such a presumption is rebuttable.[22] A defendant can thus defeat a claim in defamation where they can show that a reasonable person would not think worse of the plaintiff in a more than minor way.[23]

[40] In deciding whether a defamatory statement has been made, the Court must first decide what an allegedly defamatory statement means, assessing what meaning ordinary readers and listeners would attribute to it. In *New Zealand Magazines Ltd v Hadlee (No 2)*, Blanchard J explained the Court's task as follows:[24]

(a) The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?

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17 Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (9th ed, Thomson Reuters, Wellington, 2023) at [15.2].

18 *Craig v Slater* [2020] NZCA 305 at [44].

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

20 *Parmiter v Coupland* (1840) 6 M & W 105, 151 ER 340 (Exch) at 109, 342 per Parke B.

21 *Youssoupoff v Metro-Goldwyn-Mayer* (1934) 50 TLR 581 (CA) at 587 per Slesser LJ.

22 *Craig v Slater*, above n 18, at [45] and *Sellman v Slater* [2017] NZHC 2392, [2018] 2 NZLR 218 at [69].

23 *Sellman v Slater*, above n 22, at [4].

24 *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625 per Blanchard J.

(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…

[41] There are, however, various defences to a claim in defamation. So, for example, a defendant has a complete defence if they can satisfy the Court that the defamatory meanings contained in a statement are true or not materially different from the truth.[25] Or, where the statement is an honest opinion[26] or one protected by qualified privilege.

First cause of action – email of 19 July 2021

[42] Mr Chiv's first cause of action is founded in Ms Dai's first email of 19 July 2021. He claims that the email contains two defamatory meanings. The first is that he had been banned from trading as an accountant. The second is that he had been found guilty by CAANZ of having inappropriate sexual relationships with female clients.

[43] Ms Dai admits sending the email to Mr H and Ms C on 19 July 2019 but otherwise denies the pleaded allegations. She says instead that any allegedly defamatory statements were true and that, in any event, it is Synergy and not her

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25 Defamation Act 1992, s 8.
26 Section 9.

personally who should be liable. There is, however, no dispute that the emails were about Mr Chiv and so no issue as to identification.

[44] The issues for determination are thus whether the 19 July 2021 email contained defamatory statements about Mr Chiv; whether the defamatory statements were published by Ms Dai; and, even if defamatory, whether the statements were true or otherwise defensible.

Did the email contain defamatory statements about Mr Chiv?

[45] I am satisfied that the email of 19 July 2021 contains the two defamatory meanings pleaded by Mr Chiv.

[46] The first of the two alleged defamatory meanings – that Mr Chiv was banned or otherwise inhibited from trading as an accountant – is the obvious impression that one gets when reading the email as a whole. By highlighting the words "banned from trading" the plain meaning thus emphasised to the reader is that Mr Chiv was ineligible to perform the accounting tasks Mr H had engaged him to undertake. The use of parentheses around the words "newly appointed" also tends to reinforce the message that there was something wrong or questionable about Mr Chiv's appointment.

[47] Moreover, the context further supports this conclusion. The objective purpose of Ms Dai's email was to dissuade Mr H from terminating her services and engaging Mr Chiv. In light of that context, the contended meaning is clear: Mr Chiv was not permitted to provide accounting services to the Bakery because the regulatory bodies had so determined.

[48] Ms Dai submitted that because she did not qualify her sentence "banned from trading…" with the use of the words "as an accountant", that the email did not convey the meaning advanced by Mr Chiv. As I understood her position, she contended that the natural meaning of the email was that Mr Chiv was only banned from trading as a chartered accountant but not as an accountant in general. And, to the extent that such a meaning was defamatory, she submitted it was nevertheless true.

[49] In discerning the meaning of an allegedly defamatory statement, the Court is not concerned with the meaning that might be extracted on close analysis by a lawyer or, in this instance, a chartered accountant. Rather, the focus is on what the ordinary reasonable person would infer. The context and wording of the email is clear: the overall message to the reasonable reader in Mr H's position was that Mr Chiv was unable to service the Bakery's accounting needs.

[50] The second of the two alleged defamatory meanings – that Mr Chiv was found guilty of inappropriate sexual relationships with his female clients – is even more plain. Indeed, the way in which the email is drafted clearly supports the inference that Mr Chiv was "banned from trading" in part because of inappropriate sexual relationships with his female clients.

[51] Both meanings are patently defamatory. They were statements which were capable of having the effect of lowering Mr Chiv's standing in the eyes of reasonable people, and which were evidently offered to make reasonable people in Mr H and Ms C's positions shun him by declining to engage his accounting services for the Bakery. Furthermore, and regardless of the fact that Ms Dai presented no argument to this effect, the effect of the statements here was plainly more than minor. Given Mr Chiv was – and indeed still is – an accountant, statements that he was banned and that he had been found guilty of inappropriate sexual relationships were liable to make reasonable readers think much worse of him as a consequence.

Were the defamatory statements published by Ms Dai?

[52] While Ms Dai accepts that she sent the emails to Mr H, she nevertheless submitted that she was not personally liable because the emails were sent from her company email address. Her argument was thus that it was not her but Synergy, the company through which she trades, which published any statements about Mr Chiv.

[53] I do not accept this submission. As Mr Romanos submitted for Mr Chiv, Ms Dai is liable in her own right for being the one who first composed the defamatory

statements.[27] The email was sent in her name. The fact that Ms Dai sent the email from her company email address does not mean that she escapes personal liability as a publisher. Rather, it means that her company might be jointly or vicariously liable for the defamatory statements that were made. And, in any event, the fact that her company might be jointly or vicariously liable does not preclude her from being a publisher of the defamatory statements herself. Any liability that might attach to Synergy flows from Ms Dai's personal liability but it does not override it.

[54] It follows that I accept the defamatory statements in the email of 19 July 2021 (and the later email of 6 August 2021, to the extent that it contained any defamatory statements) were published by Ms Dai personally.

Were the defamatory statements true or otherwise defensible?

[55] Ms Dai submitted that, in any event, any defamatory statements were true. That is, she submitted that even though the meaning of her email was only that Mr Chiv had been banned from trading as a chartered accountant and not as an accountant generally, that the latter was nevertheless true as well. She also seemed to suggest in her evidence during cross-examination that she believed Mr Chiv had made admissions to the NZICA Appeals Council that he had engaged in sexual relationships with his clients, and that he did so in order to obtain a lower penalty on appeal. She said, in respect of her claim that Mr Chiv had inappropriate sexual relationships with female clients, that she was merely passing public information along to Mr H.

[56] Ms Dai's defence of truth in respect of the claim that Mr Chiv was banned from trading is easily disposed of by what the NZICA Tribunal determined in respect of complaints made against Ms Dai herself. In its determination of 21 November 2022, the Tribunal said:

> 50. In her letter to Mr H responding to his letter of 19 July 2021 (referred to above), Ms Dai made the following unsolicited allegations about Mr Chiv:
>
> (a) *That he was banned from trading by CAANZ, CPA and Immigration New Zealand.* This was an incorrect statement,

[27] Richard Parkes and Godwin Busuttil (eds) *Gatley on Libel and Slander* (13th ed, Sweet and Maxwell, London, 2022) at [7-010].

> in that while Mr Chiv's membership of [CAANZ] and CPP were suspended, this did not prevent him from operating as an accountant.
>
> …
>
> (c) *That he was no longer qualified to act as a tax agent because his conduct significantly impacts the integrity of the IRD system.* Ms Dai was wrong to say that he could not act as a tax agent, and her allegation that his conduct impacted the integrity of the IRD system was baseless.

[57] The NZICA Tribunal's determination is unequivocal and, given the Tribunal's expertise and familiarity with the regulatory framework governing chartered accountants in New Zealand, all but determinative of the matter. It confirms that while Mr Chiv's membership of CAANZ was suspended and while he was unable to practice as a chartered accountant, he was not prevented from practicing as an accountant for the Bakery. And nor, on the evidence presented by Ms Dai, was he disqualified from acting as a tax agent despite her argument to the contrary because Mr Chiv was personally liable for tax debts incurred by one or more of his companies. As Mr Romanos submitted, nothing Ms Dai presented in evidence went to support her proposition that Mr Chiv was disqualified from acting as a tax agent and so, to that extent, was "banned" or otherwise unable to perform accounting services for the Bakery.

[58] Ms Dai's statement that Mr Chiv had been found guilty of/and had previously had inappropriate sexual relationships with his female clients is equally untrue and indefensible.

[59] Her explanation that Mr Chiv must have made admissions to this effect before the NZICA Appeals Council is as implausible as it is inexplicable. There is no basis whatsoever to support the claim that he made such admissions or that the tendering of such admissions would have been to his advantage. As is evident from the NZICA Appeals Council's decision, the reference to inappropriate sexual relationships was made precisely because Mr Chiv's case had nothing to do with such relationships, making his reliance on *Roberts* (which had involved an inappropriate sexual relationship) for his appeal against penalty inapposite.

[60] Ms Dai further suggested that she had some kind of moral or professional duty to disclose this information to Mr H and so, to that extent, was "just passing on public information". Although not pleaded or explicitly argued in this way, her argument was effectively that she had a duty to inform Mr H and that any defamatory statement was, in essence, protected by qualified privilege. Such a defence is available at common law where a statement is made on an occasion where the person who makes it has an interest or duty (be it legal, social or moral) to its recipient, and the recipient has a corresponding interest or duty to receive it.[28]

[61] Notwithstanding that this defence was not pleaded, I do not accept the argument. While Ms Dai may have been under a moral or social duty to inform Mr H of the NZICA's Appeals Council decision, she had no duty to "inform" him that Mr Chiv had been found guilty of having inappropriate sexual relationships with his female clients precisely because that information was untrue. As the Appeals Council said in that decision, Mr Chiv's case had "nothing to do with an inappropriate sexual relationship between Mr Chiv and his clients". And, in any event, such a defence fails where a plaintiff can prove that in making a privileged statement, the defendant was predominantly motivated by ill will or otherwise took improper advantage.[29] The latter is easily met in this case given the context in which Ms Dai's email was made, and the patent falsehood of her statement.

[62] For all these reasons, I consider Mr Chiv's first cause of action to be made out.

Second cause of action – email of 6 August 2021

[63] Mr Chiv's second cause of action is founded on Ms Dai's email of 6 August 2021. As with the former email, Mr Chiv pleads that it contains two defamatory meanings. The first is the repeated claim that he had been found guilty of having inappropriate sexual relationships with female clients. The second was that he required psychiatric treatment.

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28 *Adam v Ward* [1917] AC 309 (HL) per Lord Atkinson.
29 Defamation Act 1992, s 19.

[64] Ms Dai advanced the same or similar defences to those already mentioned in respect of her statement that Mr Chiv had been found to have sexual relationships with his female clients. She also contended however that, to the extent any statement that Mr Chiv "should seek psychiatric treatment" was defamatory, it was nevertheless defensible on the basis it was an honest opinion.

[65] As with the first email of 19 July 2021, I am satisfied that Ms Dai is liable in her own right as the publisher of this email. The issues for determination are thus whether the email contained defamatory statements about Mr Chiv and, if so, whether the statements were nevertheless defensible.

Did the email contain defamatory statements about Mr Chiv?

[66] Ms Dai's email of 6 August 2021 referred Mr H to the NZICA Appeals Council decision which was attached in its entirety. Ms Dai wrote "I refer to … paragraph 14 [of the decision] to confirm the CAANZ's finding of having sexual relationships with his female clients".

[67] Ms Dai appeared to suggest in her evidence that her statement was not defamatory because she was merely referring to the NZICA Appeals Council decision. Although not stated explicitly, she appeared to suggest that by attaching the Appeal Council's decision, she was somehow "retracting" her earlier statement that Mr Chiv had been "having inappropriate sexual relationships with his female clients". In cross-examination, she said:

> Q. Can you see Mr Chiv's real concern about the allegations of him having sexual relations with his female clients. Can you see his concern expressed in [the third paragraph of his letter dated 6 August 2021]?
>
> A. First of all, I did not accuse him of that because his personal choice is irrelevant to me, and I was just simply passing on public information. And second of all, by reading Mr Chiv's statement, and basically what he was trying to say is I don't know who they were, and so I had to retract my statement. And so my response was it was just a paragraph from the CAANZ publication. It has nothing to do with me.

[68] I consider this explanation to be disingenuous and difficult, if not impossible, to reconcile with the evidential record. Ms Dai was not simply passing the NZICA

Appeals Council decision on to Mr H. Rather, she was giving her own interpretation or representation of the decision to him. It was that which was plainly defamatory and untrue.

[69] The fact that the attachment of the entire decision showed Ms Dai's statement to be patently false does not alter this assessment. It was the false representation and or incorrect interpretation of the decision which was the defamatory statement here, not the "referral" of the decision itself. And as Mr Romanos submitted, it would have been unrealistic to expect Mr H and Ms C (or indeed, most readers of the email) to have read the entire NZICA Appeals Council decision attached, and to have then critically assessed it in order to determine whether it supported Ms Dai's claim.

[70] The second defamatory meaning pleaded, namely that Mr Chiv "should seek psychiatric treatment", is more challenging. As Mr Romanos rightly acknowledged, such an accusation could be thought of as mere vulgar abuse. Indeed, given how commonplace it can be to say that someone is "crazy", or "ridiculous" in this day and age, it is questionable whether this statement was truly capable of adversely affecting Mr Chiv's reputation in the eyes of the reasonable person in a more than minor way.

[71] Ultimately, however, I consider this statement also to have been defamatory. The statement was not a one-off remark. Rather, as Mr Romanos submitted, it formed part of a series of statements from Ms Dai in her email which included that:

(a) Mr Chiv might have a delusional state of mind;

(b) consulting with a GP "would be a good start", and

(c) he needed support from his friends and family.

[72] Taken together and in context, the plain meaning conveyed to the reader was that Mr Chiv was so delusional to have reacted to Ms Dai's first email in the way that he did that he genuinely needed psychiatric treatment. And, given the objective purpose of the email, it was clearly offered as yet another reason for why reasonable people in Mr H and Ms C's position should decline to engage Mr Chiv's services. In

these circumstances, I am satisfied that the statement adversely affected Mr Chiv's reputation in a more than minor way.

Were the defamatory statements defensible?

[73] As already explained, Ms Dai's defences in respect of the statement that CAANZ had found Mr Chiv to have had sexual relationships with his female clients are unfounded. The statement was defamatory and inexcusable. The fact that it was repeated after Mr Chiv's letter to her only confirms this.

[74] Ms Dai pleads however that, to the extent that her statement "I think [Mr Chiv] requires psychiatric treatment" was defamatory, that it was merely an expression of honest opinion.

[75] As Mallon J said in *Durie v Gardiner*,[30] the defence of honest opinion requires that:

> (a) the words complained of are an expression of opinion (the opinion question);
>
> (b) the facts on which the opinion is based are indicated in the publication at issue or are generally known to the public (the publication facts question);
>
> (c) those facts are proved to be true or not materially different from the truth (proving the publication facts);
>
> (d) where the defendant is the author of the opinion, the opinion expressed must be the defendant's genuine opinion;

[76] While I agree that the relevant statement "I think Kevin should seek psychiatric treatment…" is suggestive of expressing an opinion, the defence is unsustainable.

[77] As Mr Romanos rightly submitted, no publication facts have been pleaded. Without particulars, the factual basis on which Ms Dai says her statement could be regarded as an honest opinion is unclear.

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30 *Durie v Gardiner* [2017] NZHC 377, [2017] 3 NZLR 72 at [115]. Footnotes omitted.

[78] Even so, I reject that any such factual basis exists. Ms Dai explained in evidence that her purported concern for Mr Chiv's mental health came from the letter he sent her on 6 August 2021. She said:

> A … When I read his letter for a defamation claim for $200K and he alleged me something that I didn't really mean, and a normal person would have wondered what he went through, is it very important? His wellbeing is important so it is sensible to suggest to him to see psychiatric treatment. That has nothing to do with allegation about his mental health issues because I think Mr – that's just a reflection on Mr Chiv himself because he is some kind of toxic character.
>
> Q. I put it to you you're being very scathing of Mr Chiv, saying that you find him delusional, that he requires psychiatric treatment, that you couldn't help him, that he needs the support of his family and friends?
>
> A. Correct, and I think having friends and family for support is very important because he cannot face everything by himself.
>
> Q. You have no basis to accuse him of requiring psychiatric treatment, did you? You didn't mention, you didn't say, you just asserted it?
>
> A. The basis was because I cited, I was simply citing a publication and he alleged me as the source of information and a normal person would assume what happened to him and it must be a tough time and essentially he was liquidated by IRD in 2019 and he was unable to comply with the settlement agreement and that he was in financial trouble that he declared financial hardship in 2019, and it must be very difficult for him.
>
> Q. And this is in 2021, this email you're writing, isn't it, not in 2019?
>
> A. Correct.
>
> Q. Two years have gone by and now Mr Chiv's got new clients, doesn't he because he's got Mr [H] and Ms [C] as clients so maybe your concerns about his mental state were misplaced?
>
> A. Well that was two years ago and maybe now and maybe I do not have to concern about his mental health, but based on my interaction with him in 2021, it was true and honest opinion especially in 2022 IRD instigated – IRD appointed liquidator instigated a bank proceeding against him.
>
> Q. So you think he needs psychiatric treatment?
>
> A. No, that's irrelevant, what I'm saying is it must be difficult for him and so seeking professional help might be a good option for him.

[79] The implication of Ms Dai's evidence was that Mr Chiv had been through such previous hardship and that his letter was such an overreaction to her initial email of 19 July 2021 that he must have had psychiatric issues. The corollary of her evidence

was thus that it was this which justified her opinion that Mr Chiv should seek psychiatric treatment.

[80] Both claims are equally unsustainable. It is clear from Ms Dai's 6 August 2021 email that her claim that Mr Chiv "should seek psychiatric treatment" was in response to his letter, as opposed to his experience being disciplined by the NZICA. To that extent, the defence fails on the basis that the facts on which the opinion was purportedly based were not indicated in the publication at issue. No reference was made in that email to liquidation or financial hardship.

[81] Even leaving that aside, however, the other supposed basis for Ms Dai's opinion is equally lacking. Given Ms Dai's claims were defamatory and untrue, it was not an overreaction for Mr Chiv to have responded to Ms Dai's 19 July 2021 email by raising the prospect of defamation proceedings against her.

[82] It is also seriously questionable whether Ms Dai could have satisfied the onus of proving the genuineness of her opinion (notwithstanding that it was not based on true facts), given the obvious ulterior motive for any expression of concern about Mr Chiv to Mr H: getting the Bakery to retain her accounting services.

[83] For all these reasons, I thus reject Ms Dai's defence of honest opinion. Mr Chiv's second cause of action is accordingly also made out.

Damages

[84] In his prayer for relief, Mr Chiv seeks damages totalling $250,000. This is the same figure referred to in his letter to Ms Dai of 6 August 2021. However, in his opening submissions, Mr Romanos appropriately suggested that the proper measure of vindication to Mr Chiv, "taking all matters in the round", should be $50,000.

[85] The general principles relating to compensatory damages in defamation were set out by Sir Thomas Bingham MR in *John v MGM Ltd* as follows:[31]

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[31] *John v MGN Limited* [1997] QB 586 (CA) at 607-608, discussed in *Television New Zealand Ltd v Quinn* [1996] 3 NZLR 24 (CA) at 33–38 per Cooke P and endorsed in *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [31].

> 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 person or 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 publication is also very relevant: a libel published to millions has 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.

[86] The Defamation Act also provides for various matters to be taken into account in assessing damages. Section 30, in particular, provides that:

> In any proceedings for defamation, the defendant may prove, in mitigation of damages, specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate.

[87] Notwithstanding her general denial that any of her emails were defamatory, Ms Dai relies on s 30 in respect of any award of damages for which Mr Chiv might be entitled. She says, in particular, that Mr Chiv's reputation was "generally bad" in the following respects to which this present proceeding relates:

(a) first, that he was unprofessional and unethical as a chartered accountant;

(b) secondly, that he was unprofessional and unethical as an immigration advisor; and

(c) thirdly, that he used the threat of defamation proceedings against others as a method/pattern to extract an improper advantage.

[88] Mr Romanos responsibly accepted that Mr Chiv did not have the same reputation as an accountant with an unblemished record. Indeed, he sensibly conceded that a discount in damages was inevitable based on Mr Chiv's history with the NZICA, which reflected a degree of unprofessionalism and unethical conduct. Even so,

however, he submitted that Mr Chiv's reputation was not one that was so fatally injured as to be incapable of further damage. He also submitted that Ms Dai's pleading under s 30 could only be relevant to the statement that Mr Chiv was "banned" from trading as an accountant, and not to the defamatory statements that he had been found to have had inappropriate sexual relationships with female clients, or that he was in need of psychiatric treatment.

[89] Mr Romanos' concessions were inevitable in light of the decisions of the NZICA Tribunal, the NZICA Appeals Council and the Immigration Advisors Complaints and Disciplinary Tribunal. It is particularly noteworthy that in upholding the NZICA Tribunal's two-year suspension against Mr Chiv, the NZICA Appeals Council said:

> [16] The charges in this case, and the particulars which support them, contain elements of dishonesty, practising while insolvent (including failing to pay GST and PAYE of approximately $80,000), failure to carry out the required CPD obligations and significant failings in Mr Chiv's practice. As the Disciplinary Tribunal notes, it is questionable whether Mr Chiv has ever had the competence to deliver services to the public at the level expected of a chartered accountant.

[90] These observations, on any analysis, reflect poorly on Mr Chiv's professional reputation and were it not for the assertions that he had been found guilty of inappropriate sexual relationships, any award of damages arising out of the other statements listed above, could only expect to attract relatively nominal damages. His reputation as an accountant and immigration advisor was necessarily seriously compromised by the various findings discussed earlier. I also include Ms Dai's comments about Mr Chiv's mental wellbeing. Although I have found that they were defamatory, I do not regard them as justifying, on their own, a significant award of damages by way of compensatory relief.

[91] However, the same cannot be said of Ms Dai's repeated assertion that Mr Chiv had been found guilty of having inappropriate sexual relationships with female clients. Those were extremely serious, malicious and damaging claims. The particularly aggravating aspects were as follows.

[92] First, both allegations relating to Mr Chiv's sexual impropriety were made to a client by a professional about another professional colleague's conduct and reputation. It is thus much less likely to be dismissed as unreliable, incorrect or hyperbole than a comment made by a non-professional, particularly where that statement was made, as it was here, in the context of an ostensibly professional/client communication. It is not necessary for Mr Chiv to prove that Mr H and/or Ms C believed the statement. What is relevant is the nature of the statement and the circumstances in which it was made.

[93] Secondly, both emails were sent by Ms Dai for the purpose of denigrating Mr Chiv in the eyes of his new clients with the intention of persuading them to abandon his professional services in favour of herself. That conduct was calculated, sustained and for an improper purpose.

[94] Thirdly, I cannot accept that in doing so Ms Dai was merely reckless. It is conceivable, although on the evidence not probable in my view, that the comments about Mr Chiv's sexual impropriety in the first email were made because Ms Dai had not read paragraph 14 of the NZICA Appeals Council's decision carefully enough and believed the reference to *Roberts* was in fact a reference to Mr Chiv. However, that explanation cannot apply to the second email of 6 August 2021 because by that time Ms Dai had received Mr Chiv's letter in which he steadfastly denied the accusations, pointed out that they were "false and defamatory", invited Ms Dai to provide evidence of her claims and enclosed a draft statement of claim. Mr Chiv indicated his preparedness to resolve the matter without recourse to legal action if Ms Dai made contact within seven days. Instead, 11 minutes after she received Mr Chiv's letter and the draft statement of claim, she sent Mr H the second email. She attached the Appeals Council's decision and expressly stated it confirmed "CAANZ's finding of having sexual relationships with his female clients". It follows I am satisfied the publication of the defamatory statements in both emails was part of a deliberate and concerted effort to blacken Mr Chiv's reputation in the eyes of his new clients.

[95] Fourthly, and relatedly, the second publication of 6 August 2021 followed an unequivocal warning from Mr Chiv that the statement was untrue and, inferentially, that Ms Dai should desist from making further statements. Otherwise, she should

reasonably expect legal consequences. She ignored that warning and repeated the accusation.

[96] Fifthly, throughout these proceedings, Ms Dai has adopted a strategy of attacking Mr Chiv at every opportunity she could, including her evidence at trial. A good example of this was in her affidavit of 27 June 2022, where she proffered a Police Acknowledgement Form as representing proof that the Police had determined Mr Chiv's conduct amounted to criminal harassment. In fact, the document proffered was simply an acknowledgement by the Police that they had received from Ms Dai a complaint against Mr Chiv of criminal harassment. There was no evidence that the complaint was acted on, or investigated let alone that any orders were made against Mr Chiv as a respondent.

[97] Ms Dai has also advanced frivolous and unsustainable arguments to avoid liability in this case. These include her contentions:

(a) that the statements at the centre of this case were made by Synergy and not by her personally;

(b) challenging Ms C's ability to understand the statements;

(c) attacking the proceedings on the basis they were filed in the wrong registry;

(d) attempting to challenge Mr Chiv's ability to prosecute his case on the basis that timetabling orders were allegedly not complied with; and

(e) even attempting to debar Mr Chiv's counsel from representing him.

[98] Although some of this conduct may be more relevant to the question of costs, it does tend to underscore the unrepentant nature of Ms Dai's approach to her defence.

[99] This brings me to consider what the appropriate level of damages should be in this case.

[100] I am mindful that the statements alleging sexual impropriety were potentially extremely damaging. They were, however, to a limited audience, namely to Mr H and Ms C only. There was no evidence that Ms Dai published these statements more widely, although there was some evidence that the former owners of the Bakery were recruited by Ms Dai for the purpose of attempting to dissuade Mr H and Ms C from using Mr Chiv's services. There was also no evidence, despite Mr Chiv's stated concerns, that the wider Cambodian diaspora, or anyone else, were made aware of Ms Dai's accusations. In that respect, any award of damages should bear in mind that publication was only made to Mr H and Ms C.

[101] The assessment of appropriate damages is necessarily subjective and turns on a case's facts. Even so, Mr Romanos helpfully referred me to three cases involving small-scale publications as a point of comparison.

[102] The first was *Heptinstall v Francken*[32] where this Court awarded $25,000 in respect of a series of letters and telephone calls, published to a newspaper editor, an employment agency, the plaintiff's employer and the plaintiff's wife. The allegations were of infidelity and mental instability. Allowing for inflation, Mr Romanos submitted that the damages in that case would equate to $43,000 today.

[103] The second was *Court v Aitken.* There, the District Court awarded damages of $20,000 to a taxi driver accused by another driver of being a paedophile and looking at paedophilic websites. The statements were made in the context of a heated exchange, in front of other taxi drivers and possibly passengers exiting the airport. On appeal, the High Court increased the damages to $40,000.[33] Inflation adjusted, Mr Romanos submitted that that sum equates to approximately $62,000 today.

[104] The third was *V v Zhang*[34]. There, the District Court awarded $1,000 to each of two plaintiffs. The defamatory statements were made to a single person on the WeChat social media application. The allegations were that the first plaintiff was promiscuous; and the second plaintiff acted deceitfully.

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32 *Heptinstall v Francken* HC Dunedin CP62/00, 15 February 2002.
33 *Court v Aitken* HC Dunedin CIV-2005-414-519, 31 March 2006.
34 *V v Zhang* [2018] NZDC 17331.

[105] Mr Romanos submitted that in view of the aggravating factors engaged, a starting point of $60,000 in damages was appropriate. However, he submitted that a mitigation discount in the order of 15 to 20 per cent was warranted, bearing in mind that Ms Dai's bad reputation plea did not serve to mitigate any harm from the sexual allegations or the allegations that Mr Chiv was mentally unstable. He thus submitted that an appropriate award would be $50,000.

[106] I consider, for the reasons listed earlier, that there are significant aggravating aspects to the statements contained in both emails, particularly the allegations of sexual impropriety. Those comments were inexcusable and extremely damaging to Mr Chiv's reputation. On their own, they are deserving of a significant award of damages, even taking into account Mr Chiv's own eroded professional reputation as an accountant. In these circumstances, I agree with Mr Romanos that a global award of $50,000 is appropriate.

Result

[107] The plaintiff being successful in both causes of action, judgment is entered in his favour.

[108] An order is made that the defendant is liable in damages to the plaintiff in the sum of $50,000.

Costs

[109] Mr Chiv, being the successful party, is presumptively entitled to an award of costs. The parties are encouraged to consult with a view to agreeing on the question of costs but in the event no agreement is reached, I make the following directions:

(a) The plaintiff is to file and serve his memorandum of costs no later than **10 working days** from the date of this judgment.

(b) The defendant is to file and serve her memorandum as to costs no later than **10 working days** thereafter.

(c) No memorandum is to exceed five pages in length (excluding appendices).

[110] I shall then determine the question of costs on the papers.

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Moore J