

[1] Minh Nguyen, the fourth defendant, applies under r 15.10 of the High Court Rules 2016 to set aside the judgment of Gordon J given on 23 August 2024 in which her Honour awarded damages of \$60,000 against Mr Nguyen in favour of the plaintiff, Nguyen Thi Thanh Ha (known as Ha Nguyen),¹ for defaming the plaintiff by reposting a Facebook post headed “THE REAL FACE OF THE “HYPOCRITE” HA NGUYEN” (the Hypocrite post).² The Hypocrite Post accused the plaintiff of hiring a hacker to make false copyright claims and of inappropriate behaviour towards a 17-year-old.

[2] Gordon J also held that Mr Nguyen was jointly and severally liable with the three other defendants, against whom larger awards of damages were made, for costs of \$62,307.01.³

[3] Mr Nguyen, like the other defendants, took no part in the proceeding, although Mr Nguyen was the only defendant to accept service of the proceeding. No statements of defence were filed within the time specified by the High Court Rules, so the plaintiff applied for judgment by default. In accordance with the High Court Rules, the claim was set down for formal proof and notice to the defendants was not required.⁴

[4] In affidavits filed in support of his application and in reply to the plaintiff’s opposition, Mr Nguyen says English is his second language, but he speaks and understands English fairly well. However, he says he is not familiar with the New Zealand Court system and did not understand that judgment could be entered against him without further notice. He also says he deleted the repost after approximately 10 minutes or, perhaps, an hour. He says he recalls sharing and deleting the repost when at Westfield Newmarket on 5 May 2022.

[5] The plaintiff opposes Mr Nguyen’s application and says there is no basis for recalling the Gordon J Judgment. In her affidavit in opposition, the plaintiff notes that Mr Nguyen commented on the Hypocrite Post a number of times, including once in English. She disputes Mr Nguyen’s claim to have deleted the repost within 10 minutes and to have done so while at Westfield Newmarket. She also says friends and others

¹ To avoid confusion, I refer to Ms Nguyen as the plaintiff and to Mr Nguyen by name.

² *Nguyen v Dinh* [2024] NZHC 2358 [Gordon J Judgment].

³ At [215].

⁴ High Court Rules 2016, r 15.9(1)–(2).

she knows saw the repost, including one person who was in Vietnam at the time. Affidavits from five persons support the plaintiff's account that they saw Mr Nguyen's repost of the Hypocrite Post.

[6] Because Gordon J was involved in a criminal trial in another city when Mr Nguyen's application had been set down for hearing, the application was heard by me. I regret it has taken longer than expected to issue this judgment.

Relevant background

[7] There is a lengthy and complex history to the proceeding, in which Mr Nguyen played a relatively small part. The Hypocrite Post was one of three posts considered in the proceeding. To ensure Mr Nguyen's application is considered in context, I adopt the following summary of the background from Gordon J's judgment.

[11] [The plaintiff] was born and raised in Vietnam. She came to New Zealand in 2011 as a PhD candidate on scholarship funding from the Vietnamese government, though she was unable to complete her studies due to health issues. She has remained in New Zealand and is now a citizen of New Zealand (along with her husband and two children).

[12] [The plaintiff] says the New Zealand Vietnamese community is small and tight-knit, with the 2018 census data showing that there were 10,086 people who identified as Vietnamese, most of whom lived in Auckland and Wellington. For this reason, she says she is well-known throughout the Vietnamese community for her community and voluntary work.

[13] She is a founder, organiser, and teacher of VietKidsNZ, an unincorporated organisation that provides free Vietnamese language and culture classes for Vietnamese children in New Zealand. Her work for this organisation is voluntary.

[14] [The plaintiff] has moderated a Facebook group named "Vietnamese Embassies and Me" since 2016. Through the group, she helps Vietnamese expatriates in New Zealand to access consular services without the payment of bribes which were allegedly required. She has been quoted in the media for speaking out against the alleged corruption at the Vietnamese Embassy. In response, the Vietnamese Embassy has publicly accused [the plaintiff] of owing scholarship debt to the government due to her incomplete studies. [The plaintiff] denies these allegations.

[15] In addition, [the plaintiff] operates a Facebook page called "Protect the Rights of Vietnamese Employees in New Zealand". The page offers information, assistance and advocacy to Vietnamese workers in New Zealand. This work is also voluntary.

[16] Around the middle of 2021, [the plaintiff] made comments on Facebook criticising employers of Vietnamese workers for their exploitation of these workers. Her criticisms did not name any particular employer. Jenny Pham, an Auckland-based businesswoman, believed these criticisms were about her and, in turn, made criticisms of [the plaintiff] on Facebook.

[17] On 6 October 2021, the second defendant, Mai Pham, made a post and further comments under that post on the Facebook group “Vietnamese Link in Wellington”. Mr Geiringer refers to this as the “shock post” and I adopt that term in this judgment. The shock post accused [the plaintiff] of receiving up to \$100,000 in government funding intended for VietKidsNZ and keeping it for herself.

[18] Around one month later, on 3 November 2021, Jenny Pham brought the Jenny Pham proceeding against [the plaintiff]. [The plaintiff] defended the defamation claim and later (on 25 March 2022) counterclaimed in defamation.

[19] While the Jenny Pham proceeding was on foot, in December 2021 and January 2022, a number of prominent Vietnamese New Zealand Facebook groups and pages were subjected to a large number of (false) copyright claims. In response, Facebook disabled these groups and pages in accordance with its policy. This caused consternation because, as Mr Geiringer submits, Facebook groups and pages are the “lifeblood” of the New Zealand Vietnamese community. Several groups were never recovered and any prior communication data contained within them were lost.

[20] On 8 January 2022, the first defendant, Dang Son Dinh, published a post on his Facebook page. Mr Geiringer refers to this post as the “copyright attacks post” and I adopt that term in this judgment. The copyright attacks post alleged that the “IT Prince” and his wife were responsible for the false copyright claims and that “she” paid journalists to write false articles. [The plaintiff] was not named directly but [the plaintiff] says that the post is very obviously about her. ...

[21] The copyright attacks post was republished by Mai Pham on her personal Facebook page later that same day.

[22] [The plaintiff] instructed her lawyer to write to Dang Dinh on 8 February 2022 in relation to the copyright attacks post, requesting that Dang Dinh apologise and pay costs and damages by way of settlement. [The plaintiff] reserved her right to take legal action against Dang Dinh. Correspondence ensued but settlement was never achieved.

[23] On 20 April 2022, Jenny Pham served a set of documents on [the plaintiff] in the Jenny Pham proceeding. Mr Geiringer refers to these documents as the “TMD documents” and I adopt that term in this judgment. The documents purported to show conversations between [the plaintiff] and a 17-year-old hacker based in Vietnam named [TMD], in which [the plaintiff] flirts with him and hires him to disable Facebook groups and pages. As noted above, there is expert evidence which establishes that these documents are falsified and this was subsequently accepted by the defendants.

[24] On 4 May 2022, a person with the username “Hoang Linh” published a post on the Facebook page “Vietnamese Overseas Students and People in

New Zealand”. Mr Geiringer refers to this as the “hypocrite post” and I adopt that term in this judgment. The hypocrite post accused [the plaintiff] of hiring a hacker to make the false copyright claims and of inappropriate behaviour towards a 17-year-old, attaching the TMD documents. [The plaintiff] says that either: “Hoang Linh” is Dang Dinh’s pseudonym and so he was the author of the post; or he authorised its publication; or he provided the documents in circumstances in which it was reasonably foreseeable that they would be published.

[25] The hypocrite post was republished by the third defendant, Julie Fam, and the fourth defendant, Minh Nguyen, later that same day. [The plaintiff] promptly instructed her lawyers to write to the first, third and fourth defendants requesting they take down the hypocrite post, apologise, and explain the origin of the TMD documents. Despite repeating this request several times, this did not eventuate.

[26] On 27 May 2022, Mai Pham made a post on her Facebook page. Mr Geiringer refers to this as the “Mai Pham post”. I will adopt that term. The Mai Pham post called [the plaintiff] “vile” and accused her of hiring another hacker (not [TMD]) to make false complaints against other people’s Facebook pages.

[27] On 12 September 2022, Keith Ng provided expert evidence on behalf of [the plaintiff] that the TMD documents were all fabricated. This evidence was served on the defendants either later that day, or the day after. It was eventually accepted by all parties that the TMD documents were fake.

[28] On 30 October 2022, Jenny Pham posted an apology on her Facebook page. This apology was reposted by Mai Pham and Minh Nguyen later that same day. Dang Dinh reposted Jenny Pham’s apology on 18 November 2022 but did not make the post publicly accessible until 26 November 2022. Around the same time these apologies were posted and reposted, Dang Dinh, Mai Pham and Julie Fam filed affidavits in the Jenny Pham proceeding explaining that they had been defrauded by hackers in Vietnam. ...

[8] The plaintiff brought seven causes of action against the four defendants, seeking:

- (a) against the first defendant, Dang Dinh, damages of \$125,000 and \$240,000 in respect of two separate claims, and punitive damages of \$80,000.
- (b) against the second defendant, Mai Pham, damages of \$100,000, \$100,000 and \$25,000 in respect of three separate claims;
- (c) against the third defendant, Julie Fam, damages of \$100,000; and
- (d) against Mr Nguyen, damages of \$75,000.

The Hypocrite Post

[9] Gordon J described the Hypocrite Post as follows:

[52] The hypocrite post was headed “THE REAL FACE OF THE “HYPOCRITE” HA NGUYEN” and describes an investigation into the copyright attacks causing the Facebook groups and pages to be disabled, as follows:

Hi everybody,

Surely everyone knows that many large community Facebook pages disappeared during the Christmas season at the end of 2021, and after that many people in admin roles suffered from being attacked, leading to losing their accounts, affecting their mental health and business. And most of us have lost a platform to exchange and search for information in NZ.

I will not beat around the bush. After several months of investigation, the result was “someone who everyone knows” – not unexpected by many people. However, the level of nastiness, vileness, wretchedness, and despicableness (though these words are still not enough to describe this woman) still makes many people in the investigation shocked. Everyone please see the pictures below to understand clearly (if anyone does not understand, you can comment directly and ask questions in each picture).

Some highlights:

- Pursue and destroy Son Dinh (she did all these things herself, but sued Son Dinh for \$20,000). This is a “distraction” trick to prove her innocence. Hire a hacker to report 3 accounts (old account, new account + wife's account), fanpage “Foody” and group “International students and Vietnamese in New Zealand” (more than 22,000 members). Please, can those who speak up in defense of Ha Nguyen, saying that you shouldn't “put someone in a corner” look at the actions of Ha Nguyen?

- Took down [S]’s Facebook page ([RN]’s husband, who Ha Nguyen lost the lawsuit to and had to pay \$25,000 in compensation)

- order Mai Pham's Facebook page to be taken down

- A pair of hackers named [D] and [L] took turns hacking the groups and personal Facebook accounts of many people (including agents).

- The words of a teacher teaching literacy to children, a married woman with children, to a 17 year old hacker, what does everyone think?

All of this evidence will be sent to NZ Police and Cyber Security for investigation. I hope the community is aware of this and knows to be wary of this malicious, scheming, sinister woman who throws stones and hides her hands.

[53] The “pictures” referenced in the post were the TMD documents attached to the post. The TMD documents purportedly show conversations between [the plaintiff] and [TMD], a hacker that she was said to have hired to carry out the copyright attacks, on Facebook Messenger. The TMD documents are lengthy and the conversations take place over the period between 8 December 2021 to 10 April 2022. For example, on 5 March 2022, [the plaintiff] purportedly requested that Dang Dinh’s Facebook fan page be destroyed:

Ha Nguyen:

Hey hunnie, I need your help with some work.

Can you destroy Dang Son’s fanpage for me?

<https://www.facebook.com/FOODYVNNZ/>

What is the price hunnie? there will be a lot more work so give me a good price ok?

[TMD]:

Sure

[54] The TMD documents also purportedly show [the plaintiff] requesting Mai Pham and Jenny Pham’s pages to be destroyed:

Ha Nguyen:

also MAI PHAM

Let’s destroy them all including The Hypocrite - JENNY PHAM

right now, focus on the page first.

hey babe, if I do many more FB accounts, any discount for me?

[TMD]:

Of course you are my VIP customer, you are like my sister.

Big discount.

[55] There are many similar conversations purported to be shown by the TMD documents. In these conversations, [TMD] and [the plaintiff] purportedly refer to each other using nicknames. [TMD] calls her a “hot girl” and “lovely sis”, and [the plaintiff] calls him “hunnie” and “babe”. [The plaintiff] purportedly wrote in one conversation: “I just can’t wait to see how handsome my babe is...”

(footnote omitted)

The pleaded defamatory meanings and relevant findings by Gordon J

[10] As recorded in the Gordon J Judgment:

[56] The pleaded defamatory meanings of the hypocrite post are that [the plaintiff]:

- (a) hired a hacker to make false complaints against other people's Facebook pages;
- (b) maliciously sought to cause other people harm;
- (c) is a criminal conspirator;
- (d) behaved in an inappropriately suggestive way toward a 17-year-old boy; and
- (e) used unethical tricks designed to mislead people in the course of her legal action.

[57] I find that the words of the hypocrite post together with the attached TMD documents are capable of bearing the defamatory meanings pleaded. The flirtatious tone of the messages shown in the TMD documents are particularly harmful to [the plaintiff]'s reputation because they are likely to expose her to hatred, contempt or ridicule.

[11] Gordon J also found that the Hypocrite Post was about the plaintiff, whom it directly named.⁵ Gordon J also found that, prior to publication of the Hypocrite Post and the other two posts, the plaintiff had a high profile within the New Zealand Vietnamese community as someone with a reputation for community service and advocating for others. Gordon J further found that the defamatory publications were all the more serious because they destroyed the plaintiff's reputation within the community to which she had dedicated her life since moving to New Zealand in 2011.⁶

[12] Gordon J also said it was clear from the plaintiff's evidence the defamatory publications caused her profound distress, embarrassment and shame. However, because there were overlapping defamatory statements in the publications, Gordon J considered it was not possible to attribute those effects to any particular publication.⁷

[13] Gordon J also found that the accusation the plaintiff had been hiring hackers to disable Facebook groups and pages was an accusation of malicious betrayal, given

⁵ Gordon J Judgment., above n 1, at [62].

⁶ At [91].

⁷ At [92].

that the Facebook groups were “social glue” for the New Zealand Vietnamese community and their removal had caused great distress.⁸ Further, Gordon J found the allegation in the Hypocrite Post that the plaintiff, a 45-year-old married woman, was flirting with a minor living in Vietnam, was a serious allegation which had been widely believed and discussed in the comments of the Hypocrite Post and elsewhere.⁹

[14] Gordon J held that the first defendant had been responsible for the publication of the Hypocrite Post on the Facebook group “Vietnamese Overseas Students and People in New Zealand”, which had about 2,600 members at the time. Gordon J noted that the post had attracted around 135 reactions, 95 comments and five shares within 24 hours of publication.¹⁰ While it was not possible to trace the spread of defamatory posts with precision, her Honour accepted the publications were made to significant online audiences (especially against a small New Zealand Vietnamese community of around 10,086 people), though to varying degrees.¹¹

Damages ordered by Gordon J against first, second and third defendants

[15] In assessing damages, Gordon J considered the conduct of the first defendant and statements he had made in the Jenny Pham proceeding. Gordon J considered there was evidence of serious aggravation on the part of the first defendant, whose explanation for his conduct she found to be evasive and lacking in credibility.¹² Gordon J awarded general damages of \$365,000 against the first defendant (\$125,000 in relation to the copyright attacks post and \$240,000 for the Hypocrite Post).¹³ Gordon J also awarded punitive damages of \$30,000 against the first defendant.¹⁴

[16] Gordon J also considered the conduct of the second defendant to have been seriously aggravating and noted that the second defendant had blatantly disregarded the plaintiff’s attempts to make contact through her lawyer and had instead turned to the court of public opinion. her Honour placed particular weight on the fact the second

⁸ At [96].

⁹ At [98].

¹⁰ At [103].

¹¹ At [107].

¹² At [120]–[151].

¹³ At [153].

¹⁴ At [197].

defendant had privately messaged the plaintiff to make goading remarks.¹⁵ Gordon J awarded general damages of \$225,000 against the second defendant.¹⁶

[17] Gordon J noted that the third defendant had complained to the police, accusing the plaintiff of hiring hackers to make false reports against her account and had made a post on her Facebook page referencing her police complaint and calling on the police to protect her from “serious #cybercrime activity”. She had also made a number of other posts and comments about the plaintiff on her Facebook page and had declined to engage with the plaintiff’s lawyers.¹⁷ Gordon J awarded general damages of \$100,000 against the third defendant.¹⁸

Gordon J’s consideration of Mr Nguyen’s conduct / assessment of damages

[18] Gordon J held that, when republishing the Hypocrite Post, Mr Nguyen had endorsed the post by writing “Oh my gosh. Thank you for providing the information.” Gordon J observed there was also evidence Mr Nguyen had made disparaging comments against the plaintiff. She noted that a member of the local Vietnamese Facebook group in Palmerston North had deposed Mr Nguyen had been “one of the most frequent commenters” on that group and had “discredited” the plaintiff.¹⁹

[19] Gordon J noted that Mr Nguyen had been the only defendant who accepted service in these proceedings. He also had a text message exchange with the plaintiff as follows:²⁰

Minh Nguyen: Hi Ms Ha, I am Minh Nguyen, used to meet you in Palmerston North at Ms Ha’s Motel. I am sorry for what happened. I’d like to call you directly to say apology and for further discussion. Thank you.

Ha Nguyen: please contact my lawyer for any further discussion.

Minh Nguyen: I understand. I just want to let you know I realized my mistake. I want to have an opportunity to talk to you directly.

¹⁵ At [163].

¹⁶ At [165].

¹⁷ At [169]–[176].

¹⁸ At [177].

¹⁹ At [179]–[180].

²⁰ At [183].

[20] However, the evidence was, after that exchange, there had been no further contact.²¹

[21] Gordon J did not consider Mr Nguyen's conduct justified an award of \$100,000. While he faced the same claim as the third defendant of republishing the Hypocrite Post, his Facebook page had only 400 friends whereas the third defendant's page had 2,400 friends. Also, there was no evidence Mr Nguyen's republication generated any reactions, shares, or comments. The only evidence that Minh Nguyen wrote any other negative comments came from an affidavit and the comments were not attached as exhibits. Gordon J noted that Mr Nguyen had been the only defendant who accepted service of proceedings and accepted he had genuinely apologised, albeit privately and after proceedings had been served. Gordon J considered damages of \$60,000 were appropriate.²²

Appeals by first and third defendants

[22] Although not strictly relevant to Mr Nguyen's application, I note the first and third defendants lodged appeals against Gordon J's decision. The appeal by the third defendant was later deemed abandoned after the Court of Appeal declined a third application for an extension of time to file her case on appeal.²³

Relevant legal principles

[23] Rule 15.10 of the High Court Rules provides that a default judgment may be set aside or varied by the Court on such terms as it thinks just if it appears to the Court there has been, or may have been, a miscarriage of justice.

[24] It is well-established the Court has a broad discretion under the rule, with three factors considered to be of particular importance:²⁴

- (a) Does the defendant have a substantial ground of defence?

²¹ At [184].

²² At [186].

²³ *Fam v Ha* [2025] NZCA 352.

²⁴ *Paterson v Wellington Free Kindergarten Association Inc* [1966] NZLR 975 (CA) at 983; as discussed in *Russell v Cox* [1983] NZLR 654 (CA) at 659; and *Nottingham v Registered Securities Ltd (in liq)* (1998) 12 PRNZ 625 (CA) at 629.

- (b) Is the defendant's failure to appear reasonably explained?
- (c) Will the plaintiff suffer irreparable harm if the judgment is set aside?

Submissions for Mr Nguyen

[25] Mr Stewart KC, counsel for Mr Nguyen, submits Mr Nguyen has a substantial ground of defence. He says there was no proof of publication because the plaintiff has put forward no evidence that any third party read Mr Nguyen's repost of the Hypocrite Post. Mr Stewart submits there can be no inference that the repost was read because it had been quickly removed. Mr Stewart says the plaintiff's evidence of friends who assert they saw the repost is inadmissible hearsay.

[26] Mr Stewart also submits that even if the Court were to infer the repost had been seen, the plaintiff's claim against Mr Nguyen is an abuse of process in the sense discussed in *Jameel v Dow Jones & Co Inc*.²⁵ He says the costs and judicial resources involved in the proceeding are disproportionate to whatever benefit or vindication the plaintiff may achieve in relation to a repost that was online for between 10 minutes and an hour, and when there is no admissible evidence it was seen by anyone and no evidence that anyone interacted with it.

[27] Mr Stewart also says that, even if the Court does not accept the proceeding is an abuse of process, given the absence of evidence of anyone seeing or interacting with the repost, only nominal damages of \$1.00 should have been awarded. Further, he says Gordon J should have made a global award of damages and then apportioned that among the four defendants.

[28] He also submits the plaintiff cannot reformulate her case by expanding her claim to include comments on and likes of the repost.

[29] Mr Stewart submits Mr Nguyen's failure to appear was excusable. Mr Nguyen had not consulted a lawyer and had been told by the third defendant the proceeding could only go ahead if all the other defendants had been served and that he would be

²⁵ *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75, [2005] QB 946.

notified of the Court hearing date. Mr Stewart notes the Court frequently extends latitude to self-represented.

[30] Mr Stewart submits there would be no irreparable harm to the plaintiff if the Gordon J Judgment were set aside.

Submissions for the plaintiff

[31] Mr Geiringer, counsel for the plaintiff, submits that Mr Nguyen is not credible, especially in relation to his claim the repost was deleted within approximately 10 minutes. Mr Geiringer points to evidence that suggests Mr Nguyen's repost was up for at least four hours, and notes Westfield Newmarket was closed at the times Mr Nguyen says he made and deleted the repost.

[32] Mr Geiringer submits that Mr Nguyen has provided no good reason for failing to defend the claim.

[33] Mr Geiringer says the plaintiff accepts her evidence and submissions before Gordon J may have left the impression the repost was left up for longer than it was. He submits this does not matter because Mr Nguyen commented at least five times and took no steps to delete the comments; the repost was up for longer than Mr Nguyen has acknowledged; and the accepted threshold for "more than minor harm" is low. Mr Geiringer refers to the expert evidence of Mr Keith Ng before Gordon J that the effect of Mr Nguyen's comments was to send the report and comments to his friends, subject to Facebook's algorithm.

[34] Mr Geiringer also submits the subsequent publications of the repost by adding comments to and liking the repost do not mean the plaintiff has reformulated her case; rather, they are aggravating factors that exacerbate the harm of the publication and the comments were not removed, unlike Mr Nguyen's repost. Mr Geiringer says this shows there has been no miscarriage of justice.

[35] Mr Geiringer submits an inference of publication of the repost can be drawn from the fact it was reposted on Facebook. Further, Mr Geiringer says there is direct evidence of publication through five people who saw the repost. He also notes the

indirect evidence of publication accepted by Gordon J and says her Honour was correct to conclude the repost had been published to a significant number of people.

[36] Mr Geiringer says it is clear the plaintiff's reputation had been harmed by the publication in more than a minor way. He also submits the approach taken in *Jameel*, where an application was made to strike out an action in defamation was made at an early stage in the proceeding, has no application in the circumstances of this case. He refers to passages in that judgment and in decisions and texts in New Zealand that show the Courts will exercise the power to strike out a defamation proceeding only in the rarest of cases.

[37] Mr Geiringer says the prejudice to the plaintiff of setting aside the award would be significant. Because of the statute of limitations, the plaintiff is not able to amend her claim and sue separately on each of the five comments on the repost. More generally, there would be significant time and cost in relitigating the proceeding.

Analysis

[38] This is an application to set aside the Gordon J Judgment. It is not an appeal of that judgment—a distinction the submissions of both counsel tended to overlook.

[39] In terms of the factors discussed in *Wellington Free Kindergarten, Russell v Cox* and other authorities, it is clear the overall consideration is whether it would be just in all the circumstances to set aside the Gordon J Judgment. In *Russell v Cox*, the Court of Appeal concluded it would be just in the circumstances of that case because there was a substantial issue as to ownership of chattels and the quantum of rent owing that had not been considered by the High Court at first instance.²⁶

[40] No similar situation arises in the present case. The submissions of both counsel focused largely on the three factors of whether Mr Nguyen has a substantial defence; whether his failure to appear was reasonable; and the prejudice to the plaintiff in setting aside the judgment. In the context of the first factor, there was the further

²⁶ *Russell v Cox*, above n 24, at 656.

question of whether the approach in *Jameel* has any application in the circumstances of this case.

Does Mr Nguyen have a substantial defence?

[41] I do not accept that Mr Nguyen has a substantial defence.

[42] It is plain the Hypocrite Post is defamatory of the plaintiff for the reasons found by Gordon J. It seriously damaged the plaintiff's reputation within the Vietnamese community in New Zealand to which she had dedicated her life since emigrating in 2011. Any reposting must have had similar effect.

[43] It is also plain the repost was published on Mr Nguyen's Facebook page. While Mr Nguyen says he removed it within 10 minutes or within an hour while he was at Westfield Newmarket, his evidence on these points is not reliable.

[44] The plaintiff has produced a screenshot of the repost with the time stamp of 7.46 am and "1h" ago. The expert evidence of Mr Ng is that "1h" means the repost had been up for at least one hour and possibly up to two hours. The evidence is also that Westfield Newmarket is not usually open before 9 am. And the plaintiff has produced a screenshot taken from a friend in Vietnam that suggests the repost had been up for at least four hours.

[45] While Mr Stewart challenges the admissibility of the screenshot, I consider it more reliable than Mr Nguyen's assertion that he reposted the Hypocrite Post and deleted the repost mid-morning while at Westfield Newmarket. I also note that the person who made the screenshot has herself sworn an affidavit attesting to the screenshot's authenticity.

[46] While it is not possible to be sure how long the repost was live, it is apparent it was up for a number of hours. While there is no evidence of anyone liking or commenting on the repost, I consider it likely it was seen by those who follow Mr Nguyen on Facebook. The absence of interaction with the repost may reflect the fact the repost and the Hypocrite Post were both circulating principally within the New Zealand Vietnamese Community and the Hypocrite Post was the main event.

[47] In any event, I am satisfied the repost was published and seen within that community, as is confirmed by affidavits from five persons who say they saw Mr Nguyen's repost. Even without that evidence, I see no case for inferring the repost was not seen, given the small size of the New Zealand Vietnamese Community and the evident ructions within it between the plaintiff and others such as Jenny Pham and the first defendant. I consider it likely the repost was seen and noted by those of Mr Nguyen's Facebook friends and followers within that community.

[48] Nor do I accept the current case has any parallel with that in *Jameel*, where the defendant was able to prove that only five people had accessed the defamatory material, and where the Court of Appeal held that the damage to the plaintiff's reputation had been minimal and found it hard to believe the plaintiff would have commenced the action if he had known the limited nature of the publication.²⁷

[49] Given the personally disparaging and hurtful nature of the Hypocrite Post and the small size of the New Zealand Vietnamese Community, I do not see any basis for inferring that publication of Mr Nguyen's repost, even to a relatively small number of persons within that community, caused minimal damage to the plaintiff's reputation. It was a highly charged item, with salacious details about a publicly prominent member of the New Zealand Vietnamese community. Any publication of the repost to anyone in that community is likely to have caused damage such that, at least, the usual presumption of damage should apply. This is not one of the rare cases, as discussed by the Court of Appeal in *Jameel*, where there was no actual damage to the reputation of the claimant.

[50] It follows that I also do not accept Mr Stewart's contention that any damage was minimal and, thus, any award of damages should be nominal, even leaving aside the aggravation caused by Mr Nguyen's effective further reposting of the Hypocrite Post with his separate comments. Subject to one matter discussed later, I also do not consider the fact Gordon J made awards of damages based on the plaintiff's claims and her Honour's assessment of the respective degrees of culpability of the defendants raises any real issue as to miscarriage of justice.

²⁷ *Jameel v Dow Jones & Co Inc*, above n 25, at 962.

Is Mr Nguyen's failure to appear reasonably explained?

[51] I do not consider credible Mr Nguyen's explanation that he did not engage with the proceeding because he was unfamiliar with New Zealand's court system and he did not have money for a lawyer, in circumstances where Mr Nguyen:

- (a) received a letter from the plaintiff's lawyer soon after he had reposted the Hypocrite Post;
- (b) accepted service of legal proceedings, which included a notice of proceeding in which he was advised that, if he did not file a statement of defence within 25 days of service, "... the plaintiff may at once proceed to judgment on the plaintiff's claim, and judgment may be given in your absence";
- (c) had a text exchange with the plaintiff in which she specifically told him to engage with her lawyer if he wished to have any further discussion; and
- (d) is engaging well-recognised solicitors and counsel in challenging the Gordon J Judgment.

[52] I consider it more likely the defendants decided as a group not to engage with the proceeding. However, regardless of whether Mr Nguyen's decision not to appear was an individual or a concerted decision, the reality is he chose not to file a statement of defence when he knew the plaintiff had instructed lawyers at an early stage, even before legal proceedings had commenced, and when they had been commenced, was on notice as to the possible consequences of not filing a statement of defence.

[53] On Mr Nguyen's own evidence, I consider his English would have been good enough to have understood the message in the notice of proceeding, regardless of his unfamiliarity with court processes. He must also have appreciated the damaging nature of the allegations in the Hypocrite Post and why the plaintiff had taken his repost so seriously.

[54] Accordingly, I do not accept Mr Nguyen's failure to appear is reasonably explained.

Will the plaintiff suffer irreparable harm if the Gordon J Judgment is set aside?

[55] I consider the plaintiff would suffer significant harm if the Gordon J Judgment were set aside. Even leaving aside the time and cost involved in rehearing her claim against Mr Nguyen, it is apparent from the Gordon J judgment the whole episode has taken a considerable personal toll on the plaintiff. As Gordon J held, the Hypocrite Post and the other posts caused the plaintiff profound distress, embarrassment and shame.²⁸ Even if the plaintiff were successful in a rehearing of her claim, she would have to undergo the significant stresses that would be likely to arise in court proceedings on such a personally hurtful matter that was obviously directed at undermining her standing in the New Zealand Vietnamese community. That harm, even if not financial, would be irreparable.

Would it be just in all the circumstances to set aside the Gordon J Judgment?

[56] For all the above reasons, I am satisfied it would not be just in all the circumstances to set aside the Gordon J Judgment.

[57] There is a more general reason why I consider it would not be just to set aside the Gordon J Judgment.

[58] This dispute goes back to events in May 2022. The proceeding began in September 2023. The hearing before Gordon J was in July 2024 and the Gordon J Judgment was issued the following month. The hearing of Mr Nguyen's application was in May 2025, three years after the dispute arose.

[59] Leaving aside the time since then, which is my responsibility, it would be invidious for the plaintiff if this proceeding was prolonged further as a consequence of a deliberate decision by Mr Nguyen not to engage in a proceeding he must have known was of real consequence to the plaintiff.

²⁸ Gordon J Judgment, above n 1, at [92].

Would it be just in all the circumstances to vary the Gordon J Judgment?

[60] Rule 15.10 of the High Court Rules confers the power to vary as well as to set aside a default judgment.

[61] Having regard to that power, I see no reason to vary the damages award made by Gordon J in the light of the Court of Appeal's decision in *Manaia Media Ltd v Cato*, which was issued after the hearing of Mr Nguyen's appeal,²⁹ but which was brought to my attention by Mr Stewart. The issues before me were whether any award, other than a nominal award of damages, should have been made, and whether Gordon J should have made a global award and then apportioned it among the defendants. There was no contention Gordon J had erred in her assessment of relevant considerations going to quantum. Had Mr Nguyen wanted to challenge that aspect of the Gordon J Judgment, the appropriate course would have been to lodge an appeal.

[62] There is, however, one matter which neither counsel raised but which I drew to their attention. That is, when assessing the quantum of damages to be paid by Mr Nguyen, Gordon J proceeded from the incorrect assumption the plaintiff had sought an award of \$100,000 from Mr Nguyen, the same amount sought from the third defendant, when, in fact, the claim against Mr Nguyen was for an award of \$75,000.

[63] Gordon J rightly considered Mr Nguyen's relatively brief reposting of the Hypocrite Post to be considerably less culpable and less damaging to the plaintiff's reputation than the actions of the third defendant, against whom her Honour awarded the full sum sought of \$100,000. While, as Mr Geiringer notes, the award of \$60,000 Gordon J made against Mr Nguyen was less than the \$75,000 the plaintiff had sought, I consider Gordon J would have made a lower award had she not mistakenly assumed the plaintiff had sought \$100,000 from Mr Nguyen. It is also not apparent Gordon J was aware Mr Nguyen had taken down his repost after a relatively short time.

[64] Had Gordon J been aware of these matters, I consider it likely she would have awarded damages considerably lower than the \$60,000 she awarded; probably of the

²⁹ *Manaia Media Ltd v Cato* [2025] NZCA 233.

order of \$35,000. I reach that conclusion, taking into consideration the aggravating factors of Mr Nguyen's further comments on the Hypocrite Post.

[65] In that limited respect, I am satisfied there has been a miscarriage of justice because of inadvertent judicial error and oversight. Accordingly, I consider the Gordon J Judgment should be varied to order Mr Nguyen to pay the plaintiff an award of damages of \$35,000.

[66] This variation has no consequences for the costs order made by Gordon J.

[67] For completeness, I record that I do not consider the plaintiff's alleged non-compliance with timetable orders and the late filing of evidence and submissions to be relevant to the merits of the application or to costs.

Result

[68] Except in one respect, Mr Nguyen's application to set aside the Gordon J Judgment is declined. However, the order made at [215(d)] of the judgment is varied to read:

- (d) I make an award of damages against Minh Nguyen in the amount of \$35,000.

Costs

[69] Despite my variation of the quantum of the damages award, Mr Nguyen has not succeeded in his primary claim that the Gordon J Judgment should be set aside. Accordingly, he is liable to the plaintiff for costs in the proceeding on a 2B basis—the basis on which the majority of costs were set by Gordon J.³⁰

³⁰ Gordon J Judgment, above n 1, at [212]–[214].

[70] The parties should be able to agree costs without further intervention by the Court. If they are not able to agree costs, counsel may file memoranda of no more than four pages as follows:

- (a) Any memorandum by counsel for the plaintiff is to be filed by **19 December 2025**.
- (b) Any memorandum by counsel for Mr Nguyen is to be filed by **27 January 2026**.

[71] I will then decide costs on the papers.

G J van Bohemen J