

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

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

**CIV-2022-404-849  
[2025] NZHC 729**

UNDER the Defamation Act 1992

BETWEEN WANLI ZHU  
Plaintiff

AND ZHEN CHEN  
First Defendant

XUEBING WANG (Discontinued)  
Second Defendant

PIN GAO (Discontinued)  
Third Defendant

Hearing: 27 February 2025

Appearances: Plaintiff in Person

Judgment: 1 April 2025

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**JUDGMENT OF WILKINSON-SMITH J**

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*This judgment was delivered by me on 01/04/2025 at 1 pm  
Pursuant to Rule 11.5 of the High Court Rules*

.....  
*Registrar/Deputy Registrar*

Copy to Plaintiff

## **Introduction**

[1] The plaintiff, Wanli Zhu, came to New Zealand from China at the end of 2003 and has been a New Zealand citizen since 2008. Ms Zhu was formerly an associate professor of education in China and describes herself as a scholar. She is a political commentator and YouTuber with 22,400 subscribers and 5.5 million views on her YouTube channel as at the end of 2020.

[2] The focus of Ms Zhu's political commentary and YouTube activity is to criticise the Chinese Communist Party (CCP). Ms Zhu describes herself as a dissident against the CCP.

[3] The first defendant, Zhen Chen, is described as a self-employed business owner.

[4] Ms Zhu sues Mr Chen for defamation. She says that he has made statements that she: has acted unlawfully, is working in secret for the CCP, has accepted money from the CCP, is a CCP spy and is a threat to the safety of citizens of New Zealand.

[5] Mr Chen has taken no part in the proceedings and has not filed a statement of defence.

## **Service**

[6] Mr Chen was served with the proceedings on 23 December 2021. He identified himself and accepted service of the documents. Approximately 30 minutes later he returned to the process servers address and demanded that the process server take the documents back. Upon being advised that the process server could not take the documents back Mr Chen threw the documents at the process server and left.

[7] On 14 July 2022, Mr Chen was served by a different process server. Mr Chen identified himself and declined to accept service. The process server placed the documents on the floor inside the house in front of Mr Chen. Mr Chen picked up the documents and threw them outside. The process server advised Mr Chen that he had been served.

[8] On 16 September 2024, Mr Chen was served with further documents in the proceedings. These were the plaintiff's interlocutory application for leave to discontinue proceedings against the second and third defendants, a supporting memorandum, and a responding memorandum consenting to discontinuance.

[9] Those documents were again served by a different process server. Again, the defendant refused to accept service. The documents were brought to his attention and left on his doorstep. On this occasion, Mr Chen did not identify himself, but the process server deposes that he believes it was Mr Chen who was served because:

- (a) he did not correct the process server when the process server addressed him as Mr Chen;
- (b) Mr Chen has previously been served at this address; and
- (c) a vehicle was parked in the driveway. Records available to the process server showed that a vehicle with the same registration plate was present at the address when Mr Chen was served previously.

[10] In the circumstances I am satisfied that Mr Chen has been served.

[11] Mr Chen has taken no action in the proceedings and the matter therefore proceeded by formal proof.

[12] Ms Zhu is self-represented and does not speak English. She made submissions with the assistance of an interpreter. She also filed extensive written submissions.

[13] It was clear to me that Ms Zhu did not initially understand the distinction between submissions and evidence. Ms Zhu's written submissions contained factual matters which she relied on to support her claim. Following the hearing I invited Ms Zhu to file a further affidavit confirming the truth of the factual matters that she referred to in her submissions.

[14] The further affidavit was filed on 28 February 2025. It is somewhat unusual in form, but it is properly sworn and provides sufficient evidential support for the matters set out in the synopsis of submissions also prepared by Ms Zhu.

### **The law**

[15] Ms Zhu must establish the essential ingredients of the claim, namely that:<sup>1</sup>

- (a) a statement has been made;
- (b) the statement was defamatory of her; and
- (c) the defamatory statement was published by the first defendant.

[16] In a formal proof setting the Court is not required to consider hypothetical affirmative defences.<sup>2</sup> That is because The Defamation Act 1992 requires affirmative defences to be specifically pleaded.<sup>3</sup>

[17] There is no statutory definition of what constitutes a defamatory statement. The definition developed at common law includes a statement that may tend to lower the plaintiff in the estimation of right-thinking members of society generally,<sup>4</sup> a statement about a person that tends to make others shun and avoid them,<sup>5</sup> a publication without justification calculated to injure the reputation of another by exposing them to “hatred, contempt, or ridicule”.<sup>6</sup>

[18] The principles to be applied in determining whether the various statements have the meaning Ms Zhu attributes to them are set out in *New Zealand Magazines Ltd v Hadlee (No 2)*.<sup>7</sup> The test is objective. Under the circumstances in which the

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<sup>1</sup> Stephen Todd *Todd on Torts* (9<sup>th</sup> ed, Thomson Reuters, Wellington, 2023) at 938–939; *Castillo v Ybanez* [2023] NZHC 1723 at [32]; *Nguyen v Dinh* [2024] NZHC 2358 at [31], citing *Smith v King* [2021] NZHC 1252 at [15].

<sup>2</sup> *Kim v Cho* [2016] NZHC 1771 at [4].

<sup>3</sup> Defamation Act 1992, s 40.

<sup>4</sup> *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240 per Lord Atkin.

<sup>5</sup> *Youssouppoff v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581 (CA) at 587 per Slessor LJ.

<sup>6</sup> *Parmiter v Coupland* (1840) 6 M & W 105, 151 ER 340 (Exch) at [108] per Parke B.

<sup>7</sup> *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

words were published, what would the ordinary reasonable person understand by them? The reasonable person reading the publication is taken to be one of ordinary intelligence, general knowledge, and experience of worldly affairs. The claim must not rely on a strained or too literal interpretation of the words used. The words complained of must be read in context. They must be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared.

[19] Before a statement can be held to be defamatory, it must have been published in the sense that it was communicated to some person other than the plaintiff.<sup>8</sup> No statement is defamatory if it is true. A plaintiff suing for defamation is not, however, required to prove that the statement is false. A plaintiff must only establish that the statement was published and has a tendency to affect reputation. It is for a defendant to raise a defence of truth and prove it.<sup>9</sup>

### **The statements complained of**

[20] The publications complained of were in Mandarin. Certified translations were annexed to Ms Zhu's affidavit.

[21] Ms Zhu made her submissions with the assistance of an interpreter. She impressed me both with her written submissions and with her presentation of her case. She explained that, following criticism of a Chinese national who was prosecuted for criminal offending in the United States, she became the focus of a campaign designed to portray her as dishonest and a spy for the CCP.

[22] Ms Zhu says she is a whistle blower and witness in litigation in the United States and New Zealand.

[23] The plaintiff says that the first defendant's screenname is "Bluesky". He was the leader of a group called Action Team of Himalaya Auckland Eden Farm which purported to be an organisation opposing the CCP. The plaintiff publicly criticised the Himalaya Farm Alliance (Himalaya Farm). She reported the illegal financial projects

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<sup>8</sup> *Powell v Gelston* [1916] 2 KB 615 per Bray J.

<sup>9</sup> Defamation Act 1992, ss 8 and 40.

of the Action Team of Himalaya Auckland Eden Farm to the New Zealand Financial Markets Authority (NZFMA). As a result of that, the NZFMA took action. She publicly reported on the activities of the individual who was prosecuted in the United States and who she says is connected to the Himalaya Farm.

[24] The plaintiff says as a result of her criticism of these groups and of the individual prosecuted in the United States, that individual directed his followers to insult and defame her and paid them to do so. She describes a campaign of abuse which was revenge for her exposure of financial wrongdoing by the group. Prior to Ms Zhu's criticism of the individual prosecuted in the United States, Ms Zhu did not know the first defendant. However, she quickly became aware of his online presence.

[25] Ms Zhu says that she has consistently been a dissident against the CCP. She says that the first defendant's allegations that she was a secret spy for the CCP caused devastating damage to her reputation. She suffered from damage to her credibility, and loss of her social circle, friends and supporters. Following the publication of the statements, Ms Zhu says that almost all of her friends no longer contacted her. Her career was affected. She is a self-employed political commentator and YouTuber. Her YouTube channel subscriptions dropped, and she lost numerous viewers.

[26] Mr Chen organised a group to protest outside her house in Hamilton causing distress to her daughter and parents. Ms Zhu felt she had to sell her house after Mr Chen identified her address online and in leaflets in conjunction with statements that she worked for the CCP. She accepted a lower price than she would have otherwise accepted in order to move quickly. Ms Zhu says that she and her family experienced anxiety and depression as a result of the actions of the first defendant. Ms Zhu's daughter was fearful and anxious and blames Ms Zhu. Ms Zhu says her parents are in their late 80s. They were very concerned about her safety and that of their family, and their physical health deteriorated as a result. Ms Zhu was forced to invest time and money in legal proceedings.

[27] The plaintiff submits that the defamatory information is difficult to eliminate, and it is impossible to prove her innocence. Negative information may affect her and

her family for the rest of their lives. The defamatory statements affected the plaintiff's family's business which suffered damage to its reputation.

[28] Ms Zhu maintains that she is truly a dissident against the CCP and that the individual prosecuted in the United States and the Action Team of Himalaya Auckland Eden Farm are simply presenting themselves as a dissident group for financial advantage. Those who challenge that position have tended to be subject to similar attacks, being accused of being in the pay of the CCP. This included similar attacks on prosecutors involved in the criminal proceedings in the United States.

[29] Ms Zhu sues in respect of nine publications. They are set out in a table in her submissions. Where the publication involved livestreaming or videos posted to YouTube, the images are available and the plaintiff says, show the first defendant making the defamatory statements using his online handle, Bluesky.

[30] Ms Zhu says that after she posted a video on 24 September 2020 critical of Himalaya Farm, the first defendant livestreamed on Twitter publicly threatening and intimidating her and her family. From there, the first defendant engaged in a nine-month campaign of defamation and bullying against Ms Zhu.

[31] Ms Zhu says that the first defendant's defamatory statements were made through live broadcasts which were widely retweeted by his associates, together with later livestreaming looping the defendant's video, expanding its viewership. The first defendant also handed out letters to passersby and put letters in neighbours' mailboxes in the plaintiff's community in Hamilton. Ms Zhu's full name and residential address were included. Ms Zhu says that the first defendant also handed out brochures containing defamatory statements against her in Auckland.

[32] Ms Zhu says that the first respondent's motivations are apparent from threats and intimidation in addition to the defamatory statements. On 24 September 2020 in a livestream, the first defendant said that he would "toss [Ms Zhu] to death" and make her "regret living in this world". On 26 September 2020, the first defendant and a number of associates stood outside Ms Zhu's daughter's house and a video of that was posted to YouTube. On 28 September 2020, the first respondent livestreamed outside

Ms Zhu's house and her neighbours' houses and said "[Ms Zhu] is neither the first nor the last. This is a war and we will never give in. We will fight all the way." The first respondent also said "we must let her neighbours know her real face. We will not be lenient, there is absolutely no way we can be lenient."

[33] On 29 September 2020, the first respondent livestreamed comments directed at Ms Zhu saying: "I will definitely make you and your family suffer until you doubt your life."

[34] Livestreaming on 21 February 2021, the first defendant made statements directed at Ms Zhu including:

- (a) "You want to live a peaceful life, it's impossible!"
- (b) "There are a lot of people who want to sell you out."
- (c) "You thought you moved away, Brother Blue can't find you, and our comrade-in-arms can't find you. Two words: repair car! Three words: car repair shop! Garage! Understand? New Federal State of China's comrade-in-arms are everywhere!"
- (d) "Remember, your husband's company is still there! Your daughter and son-in-law's company is still there! Where are you running to?"
- (e) "You have hurt our comrade-in-arms in China, Brother Blue will revenge on you tenfold or a hundredfold! You wait. Wait! You old bastard!"

[35] The statements complained of are set out in tables in the plaintiff's synopsis of submissions later produced as part of the plaintiff's affidavit. The first set of defamatory statements were livestreamed on Twitter on 24 September 2020. The particular defamatory imputations relied on are:

- (a) The plaintiff is a traitor.



- (b) The plaintiff has done unlawful things.
- (c) The plaintiff violated the defendant's portrait rights.
- (d) The plaintiff's bragging skills are better than CCP.

[36] The plaintiff says that this livestream was viewed over 300,000 times.

[37] The second series of defamatory statements occurred during a live broadcast on GTV, subsequently posted on YouTube on 26 September 2020. In that broadcast the first defendant said, "the plaintiff is the evil spirit of the CCP in Hamilton" and "the plaintiff is working in secret for the CCP".

[38] The third series of statements were livestreams on Twitter on 28 September 2020. Ms Zhu says that the first defendant called her a traitor/thief and said that she has accepted money from the CCP.

[39] The fourth series of statements occurred during livestreaming on GTV and later posted to YouTube on 28 September 2020. This took place outside the plaintiff's house. The statements made were:

- (a) The plaintiff is a CCP spy (statement made to the plaintiff's neighbours).
- (b) The plaintiff is a CCP spy (the first defendant told police officers).
- (c) The plaintiff is a CCP spy (the first defendant told passersby while he and his associates were outside her house).
- (d) The plaintiff is a CCP spy (statements made in leaflets placed in neighbours' letterboxes in Ms Zhu's community in Hamilton).
- (e) The plaintiff took money from the Chinese government.
- (f) The plaintiff is a lackey of the CCP.

(g) The plaintiff is the evil spirit of the CCP in Hamilton.

(h) The plaintiff is a traitor.

[40] The fifth incident of defamation relates to the letter of 28 September 2020. Its publication was through it being placed in letterboxes in the plaintiff's community. The letter included statements that the plaintiff is a CCP spy and included her full name and residential address.

[41] The sixth series of statements were published on YouTube on 29 September 2020. The first defendant said the plaintiff: is a CCP spy, is the evil spirit of the CCP in Hamilton, took money from the CCP, is a traitor, violated the first respondent's "portrait rights", is "smearing Dr Yan Limeng", and stands for the CCP and services the CCP.

[42] The seventh publication was a livestream on Twitter on 29 September 2020 when the first defendant said that the plaintiff: has accepted money from the CCP, has done unlawful things and has never been law abiding, and exploits people and cheats on her taxes.

[43] The eighth publication occurred by livestreaming on Twitter on 21 February 2021. This included statements that the plaintiff has accepted money from the CCP and has sold personal information to the CCP resulting in murder committed by the CCP. The livestream also included a statement that the plaintiff helped the CCP to hurt members of the anti-CCP movement.

[44] The final publication complained of occurred on 1 April 2021 when brochures were mass delivered to Auckland community mailboxes including in the central city. The brochures stated that the plaintiff was a spy for the CCP and a threat to the safety of the citizens of New Zealand.

## **Discussion**

[45] It is clear that Ms Zhu has spent the majority of her adult life involved in actively criticising the CCP. She was part of a community that trusted her and in which

she had standing. She says the focus of her political commentary and YouTube activity is to: criticise the CCP, to tell the truth of history, expose the “evil atrocities of the CCP”, promote concepts of democracy and constitutionalism, and defend human rights.

[46] Ms Zhu has publicly criticised the CCP on YouTube and had a large following in 2020. The statements made by the first defendant implied that this was effectively a “front”. The statements were designed to undermine Ms Zhu’s reputation in her own community. Statements that she had done “unlawful things” and cheated on her taxes impugn her honesty. The statements that she worked in secret for the CCP and provided information to the CCP resulting in people being harmed are seriously defamatory. Repeated statements that Ms Zhu is a spy for the CCP and being paid by the CCP had an effect which she described in her affidavit. Even through an interpreter her submissions about the effect of these statements were compelling. Members of her community stopped speaking to her, and it is understandable that she would have been the subject of suspicion and perhaps fear. Essentially, the statements sought to undo what has been Ms Zhu’s life’s work.

*Did Mr Chen publish the statements?*

[47] Ms Zhu must establish that the statements were published by Mr Chen or in circumstances where he was responsible for the publication.

[48] The first defendant is identified by his online name “Bluesky” which is attached to the publications. He is visible in the videos making the statements complained of. The evidence of identification comes from Ms Zhu’s awareness of his identity having seen him making the statements online including live from his place of business and seeing him outside her address.

[49] I am satisfied that Mr Chen has been correctly identified by Ms Zhu as the maker of the statements.

*Were the statements defamatory?*

[50] The statements that Ms Zhu was dishonest, cheated on her taxes, supplied information that caused people to be murdered or hurt are statements that would tend to lower her in the estimation of right-thinking members of society generally. Statements that she is a danger to the people of New Zealand and is a secret spy for the CCP were designed to make others shun and avoid her.

[51] I find that on each of the nine occasions the first respondent made statements that were defamatory of Ms Zhu.

[52] I accept that the effect on Ms Zhu was significant and there were real financial consequences. Ms Zhu sold her house as a direct result of the actions of the first defendant. Her work as a YouTube influencer was negatively affected. As in *Siemer v Stiassny*, the statements were an outright and vindictive attack.<sup>10</sup> The motive was vengeance for the stance that Ms Zhu took against the individual prosecuted in the United States and associated groups. The extent of publication was wide and multifaceted. The publication on the internet appears to have reached a very wide audience within the Chinese community. Ms Zhu lives very much within the Chinese community. She does not speak English.

[53] Ms Zhu seeks general damages and refers to the award in *Karam v Parker* as a helpful comparison.<sup>11</sup> In that case a global sum of \$525,000 in general damages was awarded in respect of 50 defamatory statements published online. A further award of \$10,000 in punitive damages was made.

[54] In comparison with *Karam v Parker*, the plaintiff's statement of claim has 14 causes of action. Originally there were three defendants and over 60 defamatory statements. The second and third defendants settled prior to the hearing. Of the 14 original causes of action, nine related to the first defendant including over 30 defamatory statements. The first defendant had four independent livestreams on

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<sup>10</sup> *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361.

<sup>11</sup> *Karam v Parker* [2014] NZHC 737.

Twitter and the live broadcast was widely retweeted by his associates expanding its viewership.

[55] Ms Zhu says that the first defendant should be responsible for 40 per cent of the damage caused and seeks general damages at no less than \$225,000 from the first defendant. She submits that if it is not practical to apportion a specific amount to each individual statement, a global sum is appropriate as adopted by the High Court in *Karam v Parker*.

[56] Ms Zhu also seeks punitive damages and says that the first defendant's statements and conduct in this case were more serious than in *Karam v Parker*. Ms Zhu says that it is particularly aggravating that in publishing false and defamatory statements including by placing leaflets in neighbours' mailboxes and handing them to passersby, her full name and residential address were included. Ms Zhu says the first defendant was ill-intentioned and cruel. He publicly threatened and intimidated Ms Zhu and her family, and publicly exposed her daughter's house by standing outside that house while livestreaming defamatory comments. Punitive damages in the amount of \$50,000 are sought.

[57] The Defamation Act requires that compensatory and punitive damages are considered separately.

#### *Compensatory Damages*

[58] General damages in defamation are directed towards the injury sustained as a result of the damage to the reputation. They are awarded to restore the plaintiff to the position he or she would have been in had the defamation not occurred. In *Siemer v Stiassny* the Court of Appeal said:<sup>12</sup>

... at common law general damages are an estimate, however rough, of the probable extent of actual loss a person has suffered and will likely suffer in the future. That is so despite the fact that such loss cannot be identified in terms of, say, advantageous relationships lost, whether from a monetary or what might be termed enjoyment of life standpoint. And, since the interests served by way of protecting a good reputation are of a dignitary and peace of mind character, it is relatively obvious that such damages are very difficult to measure in monetary terms.

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<sup>12</sup> *Siemer v Stiassny*, above n 7, at [48].

[59] In *Williams v Craig* it was said:<sup>13</sup>

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.

[60] I accept that Ms Zhu was well-regarded in her community and had numerous followers who shared her political views. I accept that publication of the statements by the defendant resulted in Ms Zhu becoming the subject of suspicion and that former friends would no longer speak to her. It is clear that some people believed the defamatory allegations, or at least thought they could have been true. Ms Zhu's reputation and standing in her community and that of her family were adversely affected.

[61] This is not a case where there was limited publication to a small number of people. The effect of the publication has caused significant stress for Ms Zhu and her family. In the case of *Kim v Cho*, factors which limited the extent of the damage were the relatively limited circulation and the fact that there was only one publication in print.<sup>14</sup> In that case, the Judge distinguished *Karam v Parker* as significantly worse because it was effected through the means of a website that was promoted in the knowledge that defamatory statements were being posted on it, involved a great number of statements and two defendants. The present case is more akin to *Karam v Parker* than *Kim v Cho*. In the latter, compensatory damages of \$100,000 were awarded.

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<sup>13</sup> *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [31], adopting *John v MGN Ltd* [1997] QB 586 (CA) at 607–608. The result of *Williams v Craig* was overturned in part by the Supreme Court (which ordered a general retrial on liability and damages) but there was nothing to suggest this classic statement of defamation law was disturbed.

<sup>14</sup> *Kim v Cho*, above n 1.

[62] There is a useful review of comparable cases in *Blomfield v Slater (Blomfield)*.<sup>15</sup> In *Lee v New Korea Herald Ltd (Lee)*, a businessman prominent within the Korean community in New Zealand sued the publishers of a Korean language newspaper in defamation and was awarded the sum of \$250,000 in compensatory damages.<sup>16</sup> The following factors justified a “significant award”:<sup>17</sup>

- (a) The allegations were serious and ungrounded in fact.
- (b) There were multiple articles which escalated in their attempts to destroy Mr Lee’s character.
- (c) The articles were published to persons within the relatively small Korean community in New Zealand.
- (d) Mr Lee was aged 73 years and, as a result of the defamatory publications, had a reputation built over decades put at risk of being improperly destroyed.
- (e) The second defendant, a director of the first defendant newspaper, declined to apologise or remove offending material from the newspaper’s website.

[63] In *Blomfield*, Johnstone J considered that *Lee* featured significantly less serious circumstances to those in Mr Blomfield’s case because the articles in *Lee* were published in a newspaper, the reach of which was much smaller than in the *Blomfield* case.<sup>18</sup> The newspaper in *Lee* had a circulation of about 3,000 people. Mr Blomfield was defamed on the blog site Whale Oil, which had 317,000 visitors per month.

[64] In *Craig v Slater*, the quantum of damages was assessed arising from another defamatory campaign undertaken by Whale Oil.<sup>19</sup> Its blog posts defamed the

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<sup>15</sup> *Blomfield v Slater* [2024] NZHC 228.

<sup>16</sup> *Lee v New Korea Herald Ltd* HC Auckland CIV-2008-404-5072, 9 November 2010.

<sup>17</sup> At [73].

<sup>18</sup> *Blomfield v Slater*, above n 15, at [109].

<sup>19</sup> *Craig v Slater* [2021] NZHC 30.

founder of the Conservative Party, Colin Craig. A sum of \$325,000 (encompassing both general and aggravated damages) was awarded. Whale Oil had targeted Mr Craig's sexual morality, his profession character, and his personal integrity.<sup>20</sup> Allegations of electoral fraud made in respect of Mr Craig were seen as particularly serious. On the other hand, Mr Craig's reputation had already been tarnished by a public complaint of misconduct made against him by his former press secretary and by other non-defamatory publications about him.

[65] In *Blomfield*, Johnstone J awarded \$475,000 as the amount necessary to compensate Mr Blomfield for the damage caused by Whale Oil's conduct, being conduct firstly in publishing the defamatory statements and then in the manner of the response to the proceedings.<sup>21</sup> The sum represented both general and aggravated damages.

[66] Punitive damages are a distinct category under s 28 of the Defamation Act which provides:

**28 Punitive damages**

In any proceedings for defamation, punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff.

[67] As was noted by Johnstone J in *Blomfield*, awards of punitive damages are rare and only available where the defendant's conduct is such that punishment beyond an award of general damages is required.<sup>22</sup>

[68] Johnstone J considered it clear that Whale Oil had acted in flagrant disregard of Mr Blomfield's rights but said that even where the s 28 threshold is met, the question of whether punitive damages should be awarded remains an open one and the individual circumstances of each defendant require consideration.<sup>23</sup> In that case, Mr Slater had been bankrupted and his company liquidated some five years before the judgment was given. The proceedings remained on foot for the purpose of offering Mr Blomfield, if

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<sup>20</sup> At [53].

<sup>21</sup> *Blomfield v Slater*, above n 15, at [121].

<sup>22</sup> At [123].

<sup>23</sup> At [124].



proven, some level of personal vindication. That vindication was found in the award of compensatory damages and Johnstone J found there did not seem to be any point in seeking to punish Whale Oil by means of a nominal award of punitive damages which will not be met. Punitive damages and costs were not awarded.

[69] The level of award in the present case is affected by the following factors:

- (a) The number of defamatory statements. In this case the defamation was repeated.
- (b) The wide dissemination of the defamatory statements through livestreaming and posting on YouTube.
- (c) The efforts made to reach a wider audience through the use of leaflets and brochures placed in letterboxes.
- (d) The accompanying intimidation and motivation of vengeance.
- (e) The real damage to reputation that may be irreparable.
- (f) The actual financial loss cause through the damage to Ms Zhu's YouTube platform and from the fact that she was forced to sell her house more quickly than she otherwise would have done in order to remove herself from the area where the first defendant knew she lived.

## **Conclusion**

[70] I am satisfied that the statements published by Mr Chen on each of the nine occasions are actionable. I consider that the award of general damages must exceed the award in *Kim v Cho*, but I do not consider that the situation is as egregious as that in *Karam v Parker* simply because of the incredibly high profile of the matters that underlay that case. There would have been almost nobody in New Zealand who did not have a view on the Bain case. The reach of the defamatory comments in the present case is not as great and is confined to the Chinese community, although I accept that

for Ms Zhu that distinction is relatively meaningless as that is very much the community that she lives in.

[71] The first defendant's motive could be seen as justifying aggravated damages, however as Courtney J said in *Karam v Parker*.<sup>24</sup>

The recognition of additional harm done through the defendant's manner or motive... is more usually viewed as enlarging the quantum of general damages rather than justifying a separate head of damage.

[72] In this case the plaintiff seeks an award of \$225,000 in general damages and punitive damages of \$50,000, being a total award of \$275,000.

[73] That amount claimed against Mr Chen is comparable to the compensatory damages of \$250,000 awarded in *Lee*. As set out previously, that case involved eight articles suggesting the plaintiff was engaged in corrupt, dishonest, and immoral practices. Publication was limited to the local Korean community in a newspaper with a circulation of about 3,000 people. Comparing the award in *Lee* to the situation in the present case, the compensatory damages sought are reasonable. However, Ms Zhu has already settled with the second and third defendants and accepts that the overall damages should be apportioned between the defendants with Mr Chen responsible for 40 per cent of the damage. The claim against Mr Chen reflects only part of the damages recovered by Ms Zhu.

[74] I consider that the damages in this case should fall between the amount awarded in *Karam v Parker* and the amount awarded in *Lee* and a total award of \$375,000 would be appropriate but that amount must be apportioned as Ms Zhu accepts.

[75] I make an award of general damages in the amount of \$150,000 in favour of Ms Zhu against the first defendant.

[76] Turning to punitive damages, I consider that the first defendant's motivations have been addressed as part of the general damages. The first defendant has taken no

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<sup>24</sup> *Karam v Parker*, above n 8, at [226].

action in respect of the proceedings and has not raised any spurious defence. I do not consider that punishment beyond an award of general damages is required.

## **Result**

[77] I grant Ms Zhu judgment and award general damages in the sum of \$150,000.

## **Costs**

[78] Ms Zhu was self-represented but had to meet the cost of translation and of having an interpreter. She claims costs of \$30,000.

[79] Since 1 September 2024, successful self-represented litigants have been able to claim costs for steps taken on or after that date.<sup>25</sup> A daily recovery rate of \$500 applies.<sup>26</sup> Prior to the new rule, a self-represented litigant might recover disbursements but not costs.<sup>27</sup> An exception to that rule was thought to possibly exist in exceptional cases.<sup>28</sup>

[80] If Ms Zhu wishes to claim costs or disbursements, a memorandum confirming the steps taken after 1 September 2024 and disbursements supported by invoices should be filed within 10 working days of the date of this judgment.

[81] The costs memorandum is not to exceed five pages.

[82] Costs will be dealt with on the papers.

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Wilkinson-Smith J

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<sup>25</sup> High Court Rules 2016, schl 1AA, pt 2, cl 3; see also *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335.

<sup>26</sup> High Court Rules, schl 2, pt 2.

<sup>27</sup> See for example the plaintiff in *Craig v Slater*; above 19, at [76].

<sup>28</sup> *Re Collier (A Bankrupt)* [1996] 2 NZLR 438.