

CANADA / JUDGMENT

I Buy Beauty LLC v. Dong

2024 BCSC 815

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Supreme Court of British Columbia

DECIDED

14 May 2024

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2024 BCSC 815 I Buy Beauty LLC v. Dong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

I Buy Beauty LLC v. Dong,

2024 BCSC 815

Date: 20240514

Docket: S220548

Registry: Vancouver

Between:

I Buy Beauty LLC doing business as Fastboy Marketing,

and Vuong Pham

Plaintiffs

And

Si Phung Dong also known as Phil Dong

Defendant

Before: The Honourable Justice Francis

Reasons for Judgment

Counsel for the Plaintiffs:

R.D. McConchie

The Defendant, appearing in person:

S.P. Dong

Place and Date of Trial:

Vancouver, B.C.

January 29-31,

February 1-2, 5-7,9,and

12-14, 2024

Place and Date of Judgment:

Vancouver, B.C.

May 14, 2024

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I. Introduction

- [1] Vuong Pham is a businessman based in Houston, Texas. He is the CEO of a Texas-incorporated company called I Buy Beauty LLC, which does business as Fastboy Marketing ("Fastboy"). Fastboy provides marketing and point-of-sale services to nail and beauty salons in the United States, Canada, and around the world.
- [2] Phil Dong is a professional YouTuber who resides in Abbotsford, BC. In his videos, Mr. Dong provides commentary on a number of issues, particularly issues of interest to people living in Vietnam and to the Vietnamese diaspora in North America, Australia, and elsewhere. Almost all of his videos are in Vietnamese.
- [3] Mr. Pham and Fastboy have sued Mr. Dong for defamation. They allege that Mr. Dong, through the YouTube channels he operates and other social media platforms, has falsely and publicly described Mr. Pham, his company, and people associated with him in ways that are damaging to their reputations, including by referring to them variously as scammers, fraudsters, communists, money launderers, and thieves. The plaintiffs have also pleaded online harassment, but at trial they advised that they were no longer pursuing this cause of action and restricted their claim to damages for defamation.
- [4] In this action, the plaintiffs seek general, aggravated and punitive damages for defamation, as well as a permanent injunction against Mr. Dong.
- [5] In his response to civil claim, Mr. Dong did not plead any known defences. At trial, he argued that nothing he said about Mr. Pham or Fastboy was defamatory. He noted that his videos were intended to provide analysis and commentary of contemporary issues and were

never intended to be defamatory. He submitted that many of the statements he made about Mr. Pham, such as the statement that he is a communist, are true. He also takes issue with some of the English translations that the plaintiffs rely on. Mr. Dong also argues that Mr. Pham has suffered no damage as a result of the statements Mr. Dong has made publicly about him, and that his business has indeed become more successful since Mr. Dong began commenting about it on his various social media feeds.

II. procedural backgroud

- [6] On June 3, 2022, Justice Brongers granted an interlocutory order in this proceeding enjoining Mr. Dong from continuing to post statements about the plaintiffs on the internet (the "Injunction Order"). The Injunction Order specifically restrained Mr. Dong, pending the outcome of the trial, from making statements on YouTube or anywhere else on the internet referring to the plaintiffs and conveying any of the following literal or inferential meanings:
- a) that the plaintiffs are laundering money;
 - b) that the plaintiffs are stealing the sensitive personal and financial data, including credit card data, of any of the following persons:
 - (1) nail salon and hair salon owners,
 - (2) employees of nail salons and hair salons, or
 - (3) individual customers of nail salons and hair salons,in order to carry out massive fraud or theft;
 - c) that the plaintiffs are selling stolen personal and financial data, including credit card data, to a notorious computer hacker, thereby compromising the security of computer devices owned or operated by their victims;
 - d) that criminal conduct by the plaintiffs exposes nail and hair salons to serious civil and criminal liability to their retail customers for all losses they sustain as a result of the theft of their personal and financial data, including credit card information;
 - e) that the plaintiffs sell defective computer software;
 - f) that the plaintiffs are fraudulently manipulating Google and Yelp reviews to trick people into buying their defective software or using their fraudulent credit card services;
 - g) that the plaintiffs are scammers;
 - h) that the plaintiffs are fraudsters;
 - i) that the plaintiffs are fakers and fabricators;
 - j) that the plaintiff Pham is an illegal immigrant; and/or

- k) that the plaintiffs incited hatred and violence against the Defendant Dong, his wife, and his children, including his 7-year-old daughter, and caused thugs to threaten and stalk them.
- [7] Justice Brongers also ordered Mr. Dong to forthwith remove from YouTube and any other online location all content that violated the terms of the Injunction Order.
- [8] Unfortunately, despite being served with the Injunction Order, Mr. Dong continued to post statements about the plaintiffs on his YouTube channels and, contrary to the Injunction Order, did not remove any of the offensive content from the internet for a number of months.
- [9] Consequently, in August 2022, the plaintiffs brought an application for contempt against Mr. Dong. On August 29, 2022, counsel for the plaintiffs appeared before Justice Funt, who issued a warrant for Mr. Dong's arrest. On October 29, 2022, the warrant was executed, and Mr. Dong was taken into custody. On October 31, 2022, he appeared before Justice Sharma in custody and was released on conditions. It was only after his release from custody that Mr. Dong complied with the Injunction Order. Since his release from custody on October 31, 2022, Mr. Dong has not published any more YouTube videos that violate the terms of the Injunction Order and appears to have identified and deleted most or all of the offending videos from the YouTube accounts under his control.
- [10] On June 21, 2023, Justice Riley found Mr. Dong guilty of civil contempt of court for violating the terms of the Injunction Order. On July 4, 2023, Justice Riley sentenced Mr. Dong to an 18-month suspended sentence.

III. Alleged Defamatory statements

- [11] This case is somewhat unusual, given the sheer volume of alleged defamatory speech that is the subject matter of the claim. The second amended notice of civil claim, which contains particulars of the alleged defamatory speech, is 110 pages long. Mr. Dong is alleged to have defamed the plaintiffs on many of his 12 different YouTube channels, via a GoFundMe page, and over LinkedIn.
- [12] The essence of the claim is that, starting in early January 2022, and continuing until his arrest on October 29, 2022, Mr. Dong regularly and continually engaged in a campaign of defamation against the plaintiffs. The plaintiffs claim that the defamatory conduct included publishing scores of videos and giving a platform to the associated text comments posted by the many thousands of people who viewed the videos. Mr. Dong was relentless in his campaign against the plaintiffs, often posting about them multiple times a day on multiple internet platforms.
- [13] The plaintiffs allege that the primary defamatory stings of Mr. Dong's campaign against the plaintiffs include the accusation that the plaintiff Pham is a communist, that the plaintiffs are laundering money, that the plaintiffs are stealing the personal and financial data of nail salon owners, employees and customers, and that the plaintiffs are selling this personal and

financial data. The plaintiffs also say that Mr. Dong has accused them of fraudulently manipulating Google and Yelp reviews, alleged that they are scammers and fraudsters, and accused Mr. Pham of being an illegal immigrant to the United States.

[14] The plaintiffs plead that the defamatory stings were conveyed by literal falsehoods, half-truths and spurious innuendo. The defamatory statements went viral on the internet and have been accessed, downloaded and read by many persons all over the world. They have spurred an online mob to rally against Mr. Pham and his company, which has led to threats of violence and in-person harassment of Mr. Pham and his family.

[15] At trial, for obvious practical reasons, the plaintiffs did not tender into evidence every potentially defamatory video Mr. Dong made about the plaintiffs, although well over a hundred videos were tendered into evidence. I have viewed a number of the videos, and read all the English translations that were put into evidence.

[16] The particulars of the defamatory expression, as set out in the second amended notice of civil claim, include the following:

a) A January 2, 2022 video posted by Mr. Dong on the Phil Dong channel, in which he states:

Vuong Pham 's company Fastboy Marketing engages in criminal activity and steals thousands of customers' credit card information and steals a hundred thousand US dollars from the customers' bank accounts. All Vietnamese should boycott Fastboy Marketing.

(The "Boycott Video").

b) A January 2, 2022 video posted by Mr. Dong on three of his YouTube channels, in which he calls Mr. Pham and Fastboy "incompetent" and "losers", among other things, and states that Fastboy is improperly obtaining personal information from nail salon customers and sharing it with Hieu PC, who is described as a known hacker. He further alleges in this video that Fastboy is stealing money from the credit cards of nail salon customers (the "PD Analysis Video").

c) A January 6, 2022 post that Mr. Dong published on his YouTube channel as a community post, which alleges the following about Mr. Pham:

- (1) He is a Viet Cong.
- (2) He is poor.
- (3) He is involved with the hacker Hieu PC, and this relationship is a risk for all nail salons whose customers use Fastboy's credit card machines.
- (4) Fastboy is a shell company.
- (5) Many people suspect Mr. Pham is laundering money for Vietnamese Communist Officials.
- (6) He is a criminal.

(7) He set up ghost construction projects.

(The "Community Post").

- d) A February 2, 2022 video published by Mr. Dong on his Bac Hu YouTube channel, in which he wishes his viewers a happy lunar new year and encourages them to report the plaintiffs to the US criminal authorities (the "Happy Lunar New Year Video").
- e) A February 16, 2022 video published by Mr. Dong on the Phil Dong YouTube channel, in which he states that Mr. Pham incited hatred and violence against Mr. Dong and his family, and implies that Mr. Pham is an illegal immigrant (the "February 16 Video").

[17] In addition to the Boycott Video, the PD Analysis Video, the Happy Lunar New Year Video, the February 16 Video and the Community Post, the plaintiffs plead that Mr. Dong published many other defamatory videos and text comments on his social media accounts during the period from November 9, 2021 to early 2022. At paragraph 27 of the second amended notice of civil claim, the plaintiffs list 123 of those videos.

[18] After the Injunction Order was made, Mr. Dong appears to have doubled down on his internet campaign against the plaintiffs. The titles and some portions of the text and comments of 90 YouTube videos published by Mr. Dong between June 3, 2022 and September 22, 2022 are listed at paragraph 36 of the second amended notice of civil claim (the "Summer 2022 Videos"). The titles of these videos alone contain repeated references to Mr. Pham and/ or Fastboy as money launderers, thieves, criminals, fraudsters and scammers.

[19] On or about August 1, 2022, the following post appeared on a LinkedIn page that appears to be associated with Mr. Dong:

I would like to report the following incident to your company: Mr. Vuong Pham and Mr. Lan Truong took advantage of the reputation of DR Horton Texas and Mr. Eric Windsor to scam investors from Vietnam tens of millions of dollars through a 141-acre ghost project.

(The "LinkedIn Post").

[20] On or about August 21, 2022, Mr. Dong posted a warning on the Community Page of one of his YouTube channels that said:

To the half-wits who are called "investigator" by the old double-tongued Canadian Lawyer, but piece of shit thug by me: Phil Dong had left this house six months ago, therefore, if you, thugs, come to this house and leave anything here be ready to lose your life. Everyone here in this house have gun license. The day you sneak around here is also your last day on earth.

(the "Warning Post").

[21] On or about August 21, 2022, Mr. Dong posted a video on one of his YouTube channels in which he threatened to use a gun to shoot anyone who came within 50 meters of his house.

- [22] On or about October 12, 2022, Mr. Dong started a Change.org petition. In it, he accused Mr. Pham of human trafficking, money laundering, and fraud (the "Change.org Petition").
- [23] On or about September 30, 2023, Mr. Dong published a post on the community page of his YouTube channels implying that Mr. Pham falsely reported Mr. Dong to the police. He also published several community posts on his YouTube channels that accused Mr. Pham of falsely accusing Mr. Dong of crimes, lying to the local police about Phil Dong, and engaging in dirty tricks.

IV. Issues

- [24] I must determine the following issues arising from the evidence at trial:
- a) Are the various statements of Mr. Dong as they pertain to the plaintiffs defamatory?
 - b) Has Mr. Dong established a defence to the tort of defamation, such as fair comment?
 - c) If Mr. Dong has defamed the plaintiffs, what quantum of general damages is appropriate?
 - d) If Mr. Dong has defamed the plaintiffs, should aggravated damages be awarded and, if so, in what amount?
 - e) Should Mr. Dong be required to pay punitive damages?
 - f) Are the plaintiffs entitled to a permanent injunction against Mr. Dong?

V. Defamation

A. Legal Principles

- [25] To establish defamation, the plaintiffs must prove, on a balance of probabilities, three things:
- a) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiffs' reputation in the eyes of a reasonable person;
 - b) that the words in fact referred to the plaintiffs; and
 - c) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

Grant v. Torstar Corp., 2009 SCC 61 at para. 28.

- [26] If these elements are established, the statement is presumed to be false, though the defendant can raise the defence of justification and adduce evidence to show that the statement was substantially true: Grant at paras. 28, 32.
- [27] On the first element, the test for what constitutes a "defamatory" statement was helpfully articulated by Justice Dardi in Holden v. Hanlon, 2019 BCSC 622 at para. 182:

- [182] a defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers and to lower him or her in the estimation of right-thinking members of society generally. An ordinary, right-thinking member of society is someone "who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility": *Bou Malhab v. Diffusion Métromédia CMR inc.*, 2011 SCC 9 at para. 36. A degree of common sense must be attributed to readers.
- [183] With respect to meaning, the court's role is to objectively determine what a reasonable and right-thinking reader would have understood from the words that were published. The determination of the meanings anchors the analysis because it frames what must be proven under the various pleaded defences.
- [28] The law of defamation protects not only the reputation of an individual, but also the reputation of a corporation: *Walker v. CFTO Ltd.* (1987), 37 D.L.R. (4th) 224, 1987 CanLII 126 at 233 (O.N.C.A.). Statements defaming those in control of a company can be found to have also defamed the company: *Malak v. Hanna*, 2019 BCCA 106 at para. 78.

B. Application of Legal Principles

1. Were Mr. Dong's statements defamatory, in the sense that they would tend to lower the plaintiffs' reputation in the eyes of a reasonable person?
- [29] The Boycott Video, the PD Analysis Video, the Community Post, the February 16 Video, the Change.org Petition and the Summer 2022 Videos expressly referred to Mr. Pham and Fastboy by name. While the plaintiffs did not have all of these videos transcribed and translated from Vietnamese to English, almost every one of the Summer 2022 Videos contains, in its translated title, a statement that Mr. Pham is a money launderer or has engaged in some other illegal activity. The videos that were transcribed and translated are replete with references to Mr. Pham and his company engaging in activity that is blatantly criminal.
- [30] I have no trouble finding that the statements that Mr. Pham and his company are money launderers, human traffickers, scammers, thieves, and fraudsters are defamatory in the sense that they would tend to lower the plaintiffs' reputation in the eyes of a reasonable person. Mr. Pham also explained in his testimony that, amongst the Vietnamese diaspora, many of whom fled the country during the war in the 1960s and 1970s, being called a communist or Viet Cong is deeply insulting. I am satisfied that, in the context that the statements were made, Mr. Dong's reference to Mr. Pham as a communist and as a member of the Viet Cong are also statements that could tend to lower Mr. Pham's reputation in the eyes of a reasonable person.

- [331] Almost all of the defamatory words used by Mr. Dong in his videos and posts were expressed in the Vietnamese language. With respect to the YouTube videos, the plaintiffs tendered evidence of the statements by way of the videos themselves (in Vietnamese), transcriptions of the videos (in Vietnamese), and translations of the Vietnamese transcripts into English. The translations were done by Phuong Ton-Nu, a court-certified translator and interpreter.
- [32] While Mr. Dong did not hire his own court-certified translator, he takes issue with some of the English translations provided by Ms. Ton-Nu. For example, he disputes Ms. Ton-Nu's English translation of a common Vietnamese phrase as "hiding under a skirt of a woman." Whether or not Ms. Ton-Nu correctly translated this phrase is not material, since it is not a phrase upon which the plaintiffs rely in their defamation claim.
- [33] There are points in Ms. Ton-Nu's translations where she translates the Vietnamese words used by Mr. Dong in his videos with reference to English vulgarities and swear words. Mr. Dong submits that he didn't use profanity in his YouTube videos and takes exception to his words being translated in this way. He submits that Ms. Ton-Nu has made him sound like a thug. However, since the plaintiffs' defamation claim does not rely in any way on Mr. Dong's use of profanities or crude language, I need not determine whether Ms. Ton-Nu's use of English profanities to describe certain words used by Mr. Dong was an accurate translation of those words.
- [34] Importantly, Mr. Dong has not challenged the English translation of the vast majority of the defamatory words used by Mr. Dong in his YouTube videos, including his statements that Mr. Pham and Fastboy Marketing are money launderers, thieves, fraudsters and scammers, and that Mr. Pham is a communist and a member of the Viet Cong. As such, even if I accepted Mr. Dong's submissions about the correct meaning of each word and phrase that he claims was mistranslated by Ms. Ton-Nu, it would make no difference to the outcome of the plaintiffs' defamation claim.
- [35] Mr. Dong also submitted that Mr. Pham has said, on his own social media channels and pages, many defamatory things about Mr. Dong. This may or may not be true. If this assertion were true, it would not impact the analysis of whether Mr. Dong's statements about the plaintiffs were defamatory. I note that there is presently no claim pending by Mr. Dong against Mr. Pham for damages for defamation on the basis of statements allegedly made by Mr. Pham.
2. Do the words in fact refer to the plaintiffs?
- [36] Mr. Dong was not subtle in his criticisms of Fastboy and Mr. Pham. He referred to Fastboy, Mr. Pham, Mr. Pham's wife and employees of Fastboy by name. Scores of videos contain Mr. Pham's name, and the name "Fastboy", in their titles. There is no controversy about whether the words in question refer to the plaintiffs.
3. Were the statements published by Mr. Dong?

- [37] It is uncontested that the Boycott Video, the PD Analysis Video, the Community Post, the Happy Lunar New Year Video, the February 16 Video, the LinkedIn Post, the Warning Post, the Change.org Petition, the Late 2021/ Early 2022 Videos and the Summer 2022 Videos were all published on the internet.
- [38] With the exception of the LinkedIn Post, Mr. Dong does not appear to dispute his authorship of the impugned statements. He admits to starting the Change.org Petition and, with respect to the videos, there is no controversy that he is the individual making the allegedly defamatory statements about the plaintiffs in his YouTube videos. He also admits that he was the author of the community posts that he posted on his YouTube channels. However, Mr. Dong disavows any connection to the LinkedIn page upon which allegedly defamatory statements were made. He testified that there are a number of accounts on LinkedIn that use his name and image. He argues that this page was not created by him and that the statements on the page are not his statements.
- [39] For the purpose of my defamation analysis, I am prepared to give Mr. Dong the benefit of the doubt. I have not considered the LinkedIn Post in determining the nature and scope of Mr. Dong's defamatory speech against the plaintiffs in this case.
- [40] In addition to the negative statements made by Mr. Dong in his YouTube videos and community posts, the plaintiffs also rely on comments made by viewers of Mr. Dong's videos, who watched his videos and posted their comments on Mr. Dong's YouTube channels. These comments contain many of the same insults that Mr. Dong levied against the plaintiffs, such as allegations of criminal activity and allegations that Mr. Pham is a communist, but some additionally include calls for violence against Mr. Pham and his wife and other disturbing escalations of Mr. Dong's rhetoric. The comments sections of Mr. Dong's videos contain numerous references to shooting, harming or killing Mr. Pham and his family. Prior to the Injunction Order, Mr. Dong did not take down or seek to limit the calls for violence that his videos appear to have incited, at times responding to these comments in a manner that affirmed or, at a minimum, further publicized them.
- [41] The plaintiffs tendered a Notice to Admit to which Mr. Dong never responded. He is therefore deemed to have admitted the following facts contained therein:
- a) at all material times, Mr. Dong had the ability to remove comments from his YouTube channels, to respond to comments, and to ban commentators;
 - b) at all material times, Mr. Dong had the ability to decide what level of channel comments to permit; and
 - c) Mr. Dong has the power to control comments on a video-by-video basis.

- [42] With respect to the comments left by viewers of his YouTube channels, Mr. Dong submits that he ought not be held responsible for comments made by other people. I disagree. When faced with a similar argument in *Pritchard v. Van Nes*, 2016 BCSC 686, Justice Saunders stated:
- [113] In other words, I would find that the nature of the medium, and the content of Ms. Van Nes' initial posts, created a reasonable expectation of further defamatory statements being made. Even if it were the case that all she had meant to do was "vent", I would find that she had a positive obligation to actively monitor and control posted comments. Her failure to do so allowed what may have only started off as thoughtless "venting" to snowball, and to become perceived as a call to action - offers of participation in confrontations and interventions, and recommendations of active steps being taken to shame the plaintiff [publicly] - with devastating consequences. This fact pattern, in my view, is distinguishable from situations involving purely passive providers. The defendant ought to share in responsibility for the defamatory comments posted by third parties, from the time those comments were made, regardless of whether or when she actually became aware of them.
- [43] A similar analysis may be employed in this case. Mr. Dong had an obligation to actively monitor and control posted comments on his page. His reactions and responses to comments on his videos suggest that he was, in fact, actively monitoring his comment section and aware of what was being published there. If the posted comments contained defamatory content or calls to violence, it was incumbent on Mr. Dong, as the administrator of the YouTube channels, to remove them. Particularly where the original post is clearly defamatory--as is the case with many of Mr. Dong's YouTube videos--and where the comments demonstrate an inflammation of Mr. Dong's defamatory rhetoric to include calls to violence, Mr. Dong must be held responsible for the defamatory comments he allowed to remain on his page.

C. Defences to Defamation

- [44] Mr. Dong did not plead the defences of justification or fair comment; indeed, he pled no defences at all.
- [45] Justification, or truth, is an affirmative defence that must be specifically pled. A denial that the statements are defamatory does not comprise a defence of justification. Even if this defence had been pled, to succeed on the defence of justification, the burden would be on Mr. Dong to prove the substantial truth of the "sting", or main thrust, of the defamatory statements. He has offered no evidence to show that Mr. Pham and Fastboy are in fact money launders, thieves, scammers or fraudsters.

- [46] His only evidence to support the truth of the many defamatory things he has said about the plaintiffs is a photograph of Mr. Pham posing at a military cemetery in Vietnam, which he says supports the truth of his statement that Mr. Pham is a communist. Even if such a defence had been properly pled, this evidence does not support the truth of any of the defamatory statements made by Mr. Dong, including the statement that Mr. Pham is a communist.
- [47] Fair comment has also not been pled, although in his closing submissions Mr. Dong submitted that his YouTube videos were in the nature of commentary and analysis, not statements of facts. If the defence of fair comment had been pled, the burden would be on Mr. Dong to prove that:
- (a) the comment was on a matter of public interest;
 - (b) the comment was based on fact;
 - (c) the comment, though it could include inferences of fact, was recognisable as comment; [and]
 - (d) the comment satisfied the following objective test: could any person honestly express that opinion on the proved facts? *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 28.
- [48] In his YouTube videos, Mr. Dong makes a series of incendiary suppositions about Mr. Pham and Fastboy, referring to them as money launderers, scammers, fraudsters, and thieves. While it is possible that there is some public interest in the activities of Fastboy, Mr. Dong's statements are not based in fact, are not recognizable as comments, and do not satisfy the objective test: Mr. Dong's opinion that Mr. Pham and his company are scammers and thieves is not an opinion that is honestly justified on the proven facts. Therefore, even if Mr. Dong had properly pled the defence of fair comment, he would not, on the evidence, have succeeded in bringing himself within the framework of this defence.

D. Conclusion

- [49] In all the circumstances, I find that, at a minimum, the Boycott Video, the PD Analysis Video, the Community Post, the Happy Lunar New Year Video, the February 16 Video, the Change.org Petition, and the titles to the Summer 2022 Videos all contain defamatory content.
- [50] I therefore have no difficulty finding that Mr. Dong is liable to the plaintiffs for defamation. I must therefore go on to assess damages.

VI. Damages

A. General Damages

1. Legal Principles

- [51] In *Pineau v. KMI Publishing and Events Ltd.*, 2022 BCCA 426, Horsman J.A. discussed general damages for defamation:
- [51] The primary remedy for defamation is an award of general damages. The purpose of an award of general damages is to compensate the plaintiff for the loss of reputation and injury to the plaintiff's feelings, to console the plaintiff, and to vindicate the plaintiff so their reputation may be re-established: *Bent v. Platnick*, 2020 SCC 23 at para. 148 [Bent], quoting Peter A. Downard, *The Law of Libel in Canada*, 4th ed. (Toronto: LexisNexis, 2018) at §14.2.
- [52] General damages in defamation cases are presumed from the very publication of the false statement and are awarded at large: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 1995 CanLII 59 at para. 164. Damages "at large" are not awarded merely to compensate financial losses, but to fully restore the plaintiff by vindicating and validating the infringed right. The plaintiff is vindicated when he or she can "point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge". He or she is validated (or consoled) when the award accounts for "injury to feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology or the malice of the defendant": *Pineau* at para. 52, citing *Cassell & Co Ltd. v. Broome*, [1972] U.K.H.L. 3 at 17.
- [53] In assessing general damages, courts should consider the following factors: the conduct of the plaintiff, the plaintiff's position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of a retraction or apology, and the conduct of the defendant: *Pineau* at para. 53, citing *Hill* at para. 182.
- [54] Generally, a party's ability to pay does not affect the damages assessment: *Clancy v. Farid*, 2023 ONSC 2750 at para. 20.

2. Assessment of General Damages

- [55] With the above authorities in mind, I consider the following factors to be particularly relevant to assessing damages in this case: the nature and seriousness of the defamation, the mode and extent of publication, the impact of the defamation on Mr. Pham and Fastboy, the conduct of Mr. Dong, and the absence of an apology from Mr. Dong.
- a) Nature and seriousness of the defamation
- [56] The defamatory statements made by Mr. Dong were serious and relentlessly repeated. He posted videos, sometimes multiple times a day, in which he accused Mr. Pham and Fastboy of various forms of criminal wrongdoing. In particular, the oft-repeated allegations of fraud and money laundering were serious and baseless.
- [57] Mr. Dong did not restrict his statements to Mr. Pham and Fastboy. He made disparaging remarks about Mr. Pham's wife and Mr. Pham's lawyer. Mr. Dong's incendiary posts were calculated and sustained, and spread over multiple YouTube channels.

[58] There can be no question that the defamation in this case is at the high end of the seriousness scale.

b) Mode and extent of publication

[59] In *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, Justice Abella noted at para. 41 that "the Internet has no borders -- its natural habitat is global." Compared to other forms of defamation, internet defamation is much wider in scope and has more potential to damage the reputations of individuals and companies, due to the ubiquity and accessibility of the internet: *Barrick Gold Corp. v. Lopehandia*, [2004] O.J. No. 2329 (Q.L.), 2004 CanLII 12938 at para. 30.

[60] Arguably, defamation carried out over the Internet is more damaging to one's reputation than defamation carried out by other means because of the possibility that the publications will be seen by a broader audience: *Malak v. Hanna*, 2023 BCSC 1337 at para. 167.

[61] Mr. Dong is a popular YouTuber. His videos were viewed in Vietnam and throughout the world. In the summer of 2022, he had more than 200,000 subscribers and his videos attracted tens of thousands of views. The breadth of distribution, and the interest of the community in Mr. Dong's commentary, is evident from the large volume of comments attached to his YouTube videos.

[62] The significant breadth of distribution in this case militates in favour of an award at the larger end of the spectrum.

c) Impact of the defamation on the plaintiff

[63] Mr. Pham testified about how Mr. Dong's YouTube videos have impacted him. He stated that when he first learned, in November 2021, that Mr. Dong was making videos about him, he was depressed and upset. As Mr. Dong began to produce more videos about Mr. Pham and Fastboy, Mr. Pham became concerned for his, and his company's, reputation. His employees, his friends, his customers, and even his parents saw the videos and spoke to him about them.

[64] Mr. Pham and his wife have been harassed when going about their day-to-day lives, including at the supermarket. People have called them communists and told them to "go back to Vietnam". They were threatened by strangers. They did not feel safe in their own community and they were concerned for their children's safety.

[65] For Mr. Pham as an individual, there can be no doubt that the multiple, relentless personal attacks on him and his family were an invasion of his personal privacy and an affront to his dignity: *Hill* at para. 21.

[66] However, the reputation of Fastboy as a company was also deeply affected by the defamatory statements of Mr. Dong. In his videos, Mr. Dong wrongly stated that Fastboy stole money from its customers' credit cards. Mr. Pham testified that the day after Mr. Dong posted the Boycott Video, customers started to cancel their point-of sale-contracts with Fastboy. It was

the highest rate of cancellation the company had ever seen. As Mr. Dong's campaign continued, employees started to quit because of videos Mr. Dong made, naming them and the company and saying defamatory things about them. The impact on Fastboy was huge. As Mr. Pham testified, "I have been building a business since I was nineteen and I watched it crumble around me."

[67] It is clear that Mr. Dong's defamation has had a profound damaging impact on Mr. Pham personally and on Fastboy as a company.

d) Defendant's conduct through to the end of the trial

[68] During the summer of 2022, after the Injunction Order was made, Mr. Dong engaged in a torrent of online activity, posting relentlessly about Mr. Pham and Fastboy on his YouTube channels and elsewhere. As the titles of the Summer 2022 Videos show, Mr. Dong repeatedly made videos referring to Mr. Pham as a money launderer, a scammer and a fraud. Rather than complying with the Injunction Order, Mr. Dong appears to have doubled down in the months following the injunction and posted a breathtaking number of videos in which the false and defamatory statements about the plaintiffs were repeated again and again.

[69] After being released from custody in October 2022, Mr. Dong eventually took down the YouTube videos that were the subject of the Injunction Order. However, the Change.org Petition remained online and accessible until at least September 2023, according to the testimony of Mr. Pham, although Mr. Dong did remove his own name from the petition in October 2022.

[70] On September 30, 2023, Mr. Dong posted on the Community page of his YouTube channels that a "dirty player" had secretly reported him to the police. In the comments to that video, one of the viewers stated "we need to make this VP guy and his wife pay." Mr. Dong responded to the comment by saying "the law will deal with those who made false report." The exchange Mr. Dong had with the commentator would convey to the ordinary reader that Mr. Pham deceitfully made a false report about Mr. Dong. Thus, even as late as September 30, 2023, Mr. Dong was continuing to make incendiary posts about Mr. Pham, notwithstanding the Injunction Order.

[71] As such, even though Mr. Dong has, since October 31, 2022, ceased making videos that expressly name Mr. Pham, he continued to discuss Mr. Pham online in a defamatory manner up until September 2023.

e) Absence of an apology

[72] Mr. Dong has never apologized to the plaintiffs. Interestingly, in open court, he apologized to the plaintiff's counsel for the crude and insulting things he has said about him online, but no such apology has ever been offered to the plaintiffs.

f) The plaintiff's own conduct

- [73] As I have noted, Mr. Dong submitted that Mr. Pham made defamatory statements of his own against Mr. Dong. Provoking defamation, or defaming a defendant in reply, can reduce the amount of general damages awarded: *Pineau* at para. 52, citing *Cassell & Co Ltd*.
- [74] Mr. Dong led some evidence to suggest that Mr. Pham has posted considerable content on his own YouTube pages about Mr. Dong. This evidence consisted of screenshots from YouTube videos and other social media posts, all of which were in Vietnamese and not translated for the court.
- [75] I am able to discern from the screenshots tendered by Mr. Dong that, at least since this lawsuit began, Mr. Pham has posted a number of videos on YouTube about the matter, including posting from outside the Vancouver Law Courts on court days. The name "Phil Dong" appears in the title and description of some of Mr. Pham's YouTube videos.
- [76] However, without any English translation of these videos, I am not in a position to know what Mr. Pham said in them. As such, it is not possible for the court to determine what, if any, defamatory speech is contained in Mr. Pham's YouTube videos about Mr. Dong. If Mr. Dong wished to have the general damages award against him reduced on the basis of the plaintiffs' defamatory actions against Mr. Dong, it was incumbent on him to tender English translations that would enable the court to evaluate any alleged defamation of Mr. Dong by Mr. Pham.
- [77] As such, I decline to reduce the award of general damages on the basis that Mr. Pham has engaged in retaliatory defamation against Mr. Dong.

3. Conclusion on General Damages

- [78] General damages in the range of \$190,000 to \$300,000 are commonly awarded for persistent online defamation in similar circumstances: *Mirzadegan v. Mahdizadeh*, 2022 ONSC 6082, *Sommer v. Goldi*, 2022 ONSC 3830, *Rutman v. Rabinowitz*, 2016 ONSC 5864, *Magno v. Balita*, 2018 ONSC 3230, *Canada Easy Investment Store Corporation v. MacAskill*, 2022 BCSC 202.
- [79] In my view, a significant award is necessary. The defamation in this case is very serious: the plaintiffs have been repeatedly and relentlessly accused of criminal activity. Tens of thousands of people have viewed the defamatory statements, causing profound harm to Mr. Pham's personal reputation and the reputation of Fastboy. Mr. Pham has been embarrassed and humiliated by the statements of Mr. Dong, but more importantly, his sense of safety--and the safety of his family--has been compromised. In the face of this significant harm, Mr. Dong has demonstrated a total lack of contrition.
- [80] In all the circumstances, I find that an award of \$250,000 in general damages is appropriate. The plaintiffs were represented by a single counsel who did not ask me to differentiate between the corporate and personal plaintiff in making a general damages award. As a result, I award a global sum for general damages to both plaintiffs.

B. Aggravated Damages

1. Legal Principles

- [81] Aggravated damages may be awarded in circumstances where the defendant's conduct has been insulting, high-handed, spiteful, malicious or oppressive: Hill at para. 188.
- [82] Aggravated damages are compensatory in nature. Their assessment requires the court to consider the entire conduct of the defendant prior to publishing the defamatory speech and continuing through to the conclusion of trial: Hill at para. 189.
- [83] There must be a finding that the defendant was motivated by actual malice that increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff or by increasing the mental distress and humiliation of the plaintiff. Malice can be established by intrinsic evidence derived from the defamatory statements themselves or by extrinsic evidence of the surrounding circumstances, which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff: Hill at para. 190.

2. Assessment of Aggravated Damages

- [84] The plaintiffs seek aggravated damages payable to Mr. Pham as a result of the defamation by Mr. Dong.
- [85] The nature of the allegations that Mr. Dong levied against the plaintiffs on an almost daily basis over the course of a year, on platforms circulated widely to tens of thousands of people, suggests actual malice on Mr. Dong's part. As his campaign of defamation escalated after the Injunction Order in the summer of 2022, he went as far as to livestream from outside Mr. Pham's home and workplace. He broadened the scope of his attacks to include profane and cruel defamatory statements against Mr. Pham's wife and his lawyer. The nature and scope of his single-minded defamatory campaign is such that I can only conclude that Mr. Dong was motivated by an unjustifiable intention to injure Mr. Pham. Further, as I have noted, Mr. Dong has never apologized to Mr. Pham for his actions.
- [86] Aggravated damages are warranted in this case. I assess the aggravated damages payable by Mr. Dong to Mr. Pham at \$50,000.

C. Punitive Damages

- [87] Punitive damages are not compensatory in nature, but are intended to punish wrongdoing by a party: Hill at para. 196.
- [88] Punitive damages must serve a rational purpose. The question to be asked is: is the misconduct of the defendant so outrageous that punitive damages are rationally required to act as deterrence? (Hill at para. 197).
- [89] In *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 94, the Supreme Court of Canada set out the necessary considerations in determining whether to make an award for punitive damages, including the following:

- a) Punitive damages are very much the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour.
 - b) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant for the misconduct in question.
 - c) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation.
 - d) Their purpose is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened.
 - e) Punitive damages are awarded only where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and they are given in an amount that is no greater than necessary to rationally accomplish their purpose.
 - f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.
- [90] Assessing punitive damages is highly contextual: *Airbus Helicopters S.A.S. v. Bell Helicopter Textron Canada Limitée*, 2019 FCA 29 at para. 50. Formulaic approaches are to be avoided: *Bowen Contracting Ltd. v. B.C. Log Spill Recovery Co-operative Association*, 2009 BCCA 457 at para. 23.
- [91] Denunciation and deterrence are significant factors in my consideration of punitive damages in this case. Mr. Dong's conduct was, by any standard, outrageous. He appeared to have no qualms about inciting an internet mob against an innocent man and his young family through a campaign of falsehoods and half-truths, all in the name of, as he describes it, "analysis". To do so was clearly profitable to Mr. Dong. He, like many social media personalities, understood that he could get more subscribers and views, and therefore more income, by saying increasingly scandalous things. He appears to this day to be untroubled about the fact that the things that he said were not true. This behaviour is highly reprehensible and attracts an award of punitive damages in order to send a clear message of deterrence to the community.

[92] In this case, I recognize that the permanent injunction discussed below will also assist in deterring further defamatory conduct by Mr. Dong. I am mindful of the principle of restraint that must animate punitive damages awards. In the circumstances, I assess punitive damages payable by Mr. Dong to Mr. Pham in the amount of \$50,000.

D. Permanent Injunction

[93] The plaintiffs seek a permanent injunction on the same terms as ordered by Brongers J. in the Injunction Order. In his closing argument, Mr. Dong submitted that he was "not that concerned" about a permanent injunction because he has many other things to talk about on his YouTube channels.

[94] Injunctive relief is an extraordinary remedy in a defamation case, which will only be imposed in the clearest of cases. Injunctive relief must be carefully considered where there is a likelihood that further defamatory statements will be made and a real possibility that the plaintiffs will not be compensated by the payment of damages: *Newman et al v. Halstead et al*, 2006 BCSC 65 at para. 298.

[95] As noted by Justice Douglas in *Hudson v. Myong*, 2020 BCSC 517 at para. 212, a permanent injunction may be ordered after findings of defamation where either:

- a) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding of liability for defamation; or
- b) there is a real possibility that the plaintiff will not be able to collect on a damages award.

[96] Both concerns arise in this case. Mr. Dong is unrepentant. While he professes to be uninterested in continuing to discuss Mr. Pham on his YouTube channels, his actions suggest otherwise.

[97] Further, Mr. Dong transferred his home to his wife's name after the Injunction Order was made. In a YouTube video released shortly after the Injunction Order, he claimed to be homeless, to have no car, and to have no money in his bank account. There is a real possibility that the plaintiffs will not be able to enforce the monetary judgment against Mr. Dong.

[98] Therefore, I am satisfied that the facts of this case justify a permanent injunction, on the same terms as the interlocutory Injunction Order.

VII. summary

[99] In summary, I award damages as follows:

- a) General Damages: \$250,000
- b) Aggravated Damages: \$ 50,000
- c) Punitive Damages: \$ 50,000

TOTAL: \$350,000

[100] I grant the plaintiffs a permanent injunction on the same terms as the interlocutory injunction granted by Brongers J. on June 3, 2022.

[101] In light of the substantial success of the plaintiffs, I am of the view that the plaintiffs should have their costs. I understand that the plaintiffs wish to have the opportunity to make submissions before me with respect to scale of costs. The parties may make arrangements with Supreme Court Scheduling to appear before me for a one-hour costs hearing at a convenient date.

"Francis J."

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Prepared on 27 October 2026 · Esheria