

CANADA / JUDGMENT

Sauck v. Carr

2022 BCSC 1949

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1949 Sauck v. Carr

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sauck v. Carr,

2022 BCSC 1949

Date: 20221108

Docket: S220193

Registry: Vancouver

Between:

Gordon John Sauck

and Innovative Audio/Visual Solutions Ltd.

Plaintiffs

And

Gregory Paul Carr, also known as Greg Carr

Defendant

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Plaintiffs:

V. Guo

The Defendant, G. Carr:

No Appearance

Place and Date of Hearing:

Abbotsford, B.C.

August 24, 2022

Place and Date of Judgment:

Vancouver, B.C.

November 8, 2022

Introduction

- [1] This is a without notice application brought by the plaintiffs against the defendant, Gregory Paul Carr, after having obtained a default judgment against him on March 9, 2022.
- [2] The action is framed in defamation and trespass. The plaintiffs seek substantial damages; the personal plaintiff for defamation and trespass, the corporate plaintiff in trespass as against Mr. Carr for a series of actions and statements made by him as detailed in the Notice of Civil Claim and particularized in the Notice of Application.
- [3] Both plaintiffs also seek injunctive relief as against the defendant. At the conclusion of the hearing before me, I was satisfied that injunctive relief was appropriate and made the orders sought by the plaintiffs in paragraphs 2, 3 and 4 of the Notice of Application.
- [4] What remains is an assessment of damages in respect of the outstanding claims for both the personal and corporate plaintiff. I note at the onset that I am satisfied that Mr. Carr was personally served with the Notice of Civil Claim filed in this proceeding both by virtue of the Affidavit of Personal Service filed in the proceeding and, as well, a number of subsequent posts made by the defendant acknowledging the existence of these proceedings. Indeed, in some of the posts he threatens a countersuit against the personal plaintiff.

The Background

- [5] The personal plaintiff, Mr. Sauck, is a businessman who, until recently, resided in Delta, BC.
- [6] The corporate plaintiff, Innovative Audio/Visual Solutions Ltd. ("Innovative") is a British Columbia company incorporated in 2005. Its primary business is the operation of a retail store selling and servicing audio equipment under the name "Innovative Audio". Its business location, at all material times, was Unit 204-13255 78th Ave., Surrey, BC (the "Commercial Unit").
- [7] Mr. Sauck has since moved to Denison, Iowa, to create a US division of Innovative.
- [8] Absent a response to the Notice of Civil Claim, the defendant's particulars are unknown.

- [9] For reasons unknown to the plaintiffs, the defendant began a lengthy and malicious campaign of persecution against him involving a variety of a series of defamatory remarks directed against Mr. Sauck and posted to the Internet. Mr. Carr also trespassed on both Mr. Sauck's personal residence and the Commercial Unit. In each instance, property damage occurred.
- [10] All of these matters were fully detailed in the Notice of Civil Claim served upon the defendant. The Notice of Application sets out a series of three acts of vandalism at the Commercial Unit. These occurred April 4, May 31 and December 6, 2020.
- [11] On each occasion Mr. Sauck deposed to being alerted by his alarm system to a break-in at the Commercial Unit. In each instance he attended and noted broken windows. On each instance they were repaired at a cost of approximately \$1,000.
- [12] In respect of the April 4, 2020 incident, the premises were closed for two days. On May 31, 2020, the premises were closed for one day, and on December 6, 2020, the premises were closed for one day.
- [13] In all, the plaintiff estimates that the lost revenue by virtue of the closures of the retail outlet were \$3,500 per day or \$14,000 for the four days of closures. The cost of repairing the broken glass was \$3,000 collectively.
- [14] On November 5, 2021, at approximately 4:00 a.m., Mr. Sauck deposed he was awoken by a loud banging sound in his driveway. Mr. Sauck deposed that he saw the defendant in his driveway bending the wipers of his F150 pickup truck, which was at all times lawfully parked on Mr. Sauck's property. Two of the tires of the pickup truck were also slashed. Given no response was filed, the plaintiff's assertion in the NOCC coupled with the averment as to his identification of the defendant, I am satisfied as to the issue of identity
- [15] Ill-advisedly, perhaps, Mr. Sauck gave chase to the defendant whom he says was bearing a knife at the time. Mr. Sauck did not stop to put on shoes and, as a result, says he suffered injuries to his feet and Achilles tendon. I shall return to that later.
- [16] In respect of the incident of trespass, Mr. Sauck notes that on April 8, 2020, some four days after the initial act of vandalism as against Innovative, the defendant posted online a comment that the windows of Innovative had been broken. Mr. Sauck noted the break-in had not been reported in the news.
- [17] Similarly, on November 5, 2021, the defendant posted on Google Groups a reference to vandalism having occurred at Mr. Sauck's personal residence. All four acts, according to the plaintiffs, constitute trespass for which damages are payable. The plaintiffs seek compensatory, aggravated, and punitive damages in respect of the defendant's actions.

- [18] The more substantial claim is Mr. Sauck's personal claim as against the defendant for defamatory remarks posted by the defendant on an online platform known as Google Groups from an account named "Greg Carr". The account is accessible to anyone online and can be accessed by searching Mr. Sauck's name.
- [19] Each of the series of 14 posts made by the defendant are detailed in the Notice of Civil Claim and in the affidavit in support of this application to assess damages.
- [20] Counsel for Mr. Sauck took me through each post in his submissions but it is sufficient, for these purposes, to briefly describe what Mr. Sauck describes as reoccurring themes which characterize all or most of the posts made prior to the issuance of the Notice of Civil Claim.
- [21] The defamatory allegations contained in the post allege the following:
1. that Mr. Sauck is a criminal;
 2. that Mr. Sauck is a member of or is involved with the Hells Angels motorcycle club (abbreviated in the post as "HMAC" or simply "HA") which is, according to the post, a criminal organization;
 3. that Mr. Sauck has committed fraudulent corrupt or illegal business practices;
 4. that Mr. Sauck has committed sexual assault against minors;
 5. that Mr. Sauck is a user of illegal substances including cocaine; and
 6. that Mr. Sauck is under investigation by police and may, as a result go to prison.
- [22] Mr. Sauck says all of these allegations are patently false.
- [23] The first post made by the defendant was on December 23, 2007, although it does not form part of the claim for damages here, it is of historical interest to show the long-standing campaign by the defendant as against the plaintiffs.
- [24] The posts which are the subject matter of this litigation resumed in April 2019. That post was entitled "Blast from The Past Lying Criminal Gordon Saulk". In it, any reasonable reader would infer the defendant made, as statements of fact, statements that Mr. Sauck is a criminal involved with criminal organizations, has sold pornography, committed sexual assault against minors, and uses illegal substances.
- [25] The next post complained of is on September 14, 2020 and, although not named in the title, the post itself refers to Mr. Sauck as a liar, criminal and drug user capable of violent behaviour.
- [26] On September 29, 2020, a further post made similar allegations suggesting that Mr. Sauck was under police investigation and may go to prison. It went on to claim he led a criminal lifestyle and associates with other criminals.

- [27] In December 2, 2020 a further post suggests Mr. Sauck is a criminal, corrupt, guilty of sexual offences against minors, a seller of pornography, and user of illegal substances. Similar posts continued on February 6, 2021, February 7, 2021, October 9, 2021, October 24, 2021, November 5, 2021, November 8, 2021, November 9, 2021, November 16, 2021, November 26, 2021, and November 28, 2021.
- [28] In the result, these proceedings were commenced on January 13, 2022, and served on the defendant personally on January 26, 2022.
- [29] The defendant continued posting subsequent to these proceedings being initiated, and by that I mean preparation of pleadings by counsel. The subsequent posts are, of course, not referenced in the NOCC.
- [30] Nonetheless, following service upon him of the pleadings, the defendant continued to make derogatory and defamatory posts about Mr. Sauck on a more frequent basis. Posts by the defendant were made December 12, 13, 14, 24 and 27, 2021. Further postings were made January 15, 2022 (x 2), January 17, January 19, January 20, January 22, 2022; February 1, February 2, February 3, 2022; March 2, March 5, March 17, March 18, March 21, 2022; April 8, April 10, April 14, April 19, April 27, 2022; May 1, May 3 (x2), May 14, May 22 and May 26, 2022; and finally, June 9, 2022.
- [31] All of the posts are similar to that earlier described and are fully detailed in the affidavit of Mr. Sauck.
- [32] In posts subsequent to the receipt of the pleadings by the defendant, the defendant posted that Mr. Sauck had falsely made police reports against the defendant, was suffering from a mental breakdown and that his business was in financial ruins, that the Mr. Sauck is homosexual, commits disreputable business practices, is a violent criminal who was made false reports to the police, that he is a psychopath, and has the propensity to become a serial rapist.
- [33] On another occasion in April 2022, the defendant suggested that Mr. Sauck had a propensity to commit arson.
- [34] In a May 22, 2022, post, the defendant either directly, or by way of innuendo, suggested that Mr. Sauck is prone to attacking cars driven by Asians.
- [35] On April 10, 2022, the defendant left a comment in an article on an online magazine known as Soundstage! Solo. It is a website dedicated to audio and equipment and features articles on its website reviewing audio equipment and stores. Visitors to the website can leave comments.
- [36] The defendant left a comment as follows:

Do a Google Group search of the name Gordon Sauck in van.general he is a chronic liar involved unsuccessfully in crime. He was seen attacking Asians in their cars in Delta with a hockey stick he is a totally stressed out druggie. Sister is an ugger [sic] with violent tendencies.

- [37] That post remained available on Soundstage! Solo's website until removed a day later. The Google Groups' postings alluded to earlier in these reasons for judgment remain online and viewable by the public as only the defendant can delete the posts.
- [38] Mr. Sauck deposed as to the impact of these posts and the defendant's actions upon him personally in respect of his business.
- [39] He deposed that customers of Innovative have told him that they have seen the defendant's online posts about him and question what he will do about them. While most have expressed disbelief as to the contents, Mr. Sauck says that he is greatly embarrassed when these matters are raised.
- [40] He believes, although it is unproven, that customers or potential customers have avoided his business because of the posts.
- [41] All of Mr. Sauck's employees at Innovative know about the defamatory posts, which again he says are embarrassing.
- [42] He and his wife have separated. Mr. Sauck attributes the separation, in part, to the strain caused by the defendant's defamatory remarks. His former wife has not filed any material supporting that contention.
- [43] Nonetheless, he notes that when they went to sell their home in October 2021, the defendant apparently became aware of the sale and made various posts respecting the property and its owner, Mr. Sauck, on October 24, November 5, 8, 9, 26 and 28, 2021.
- [44] The prospective purchaser(s), who, despite the adverse commentary in the posts ultimately completed the purchase, expressed concerns through their realtor about the posts and the potential for further vandalism at the residence they were intending to purchase. The purchase went through but, according to Mr. Sauck, the experience was stressful and humiliating. Mr. Sauck believes, but has not proven, that other potential buyers were deterred from putting in offers to purchase the residence because of the ongoing defamatory posts referencing Mr. Sauck and his address.
- [45] In early 2022, Mr. Sauck moved to Denison, Iowa, to expand his business in the United States. He purchased a home there and has been working renovating the home. He has registered a business known as Innovative Audio LLC in Iowa to begin carrying out the business of audio sales and service.

- [46] Denison is a town of 9,000 residents. Mr. Sauck deposes that he has overheard citizens commenting on his name, having presumably Googled him and been exposed to the posts. He has had to explain to people the nature of what is going on in Canada. He believes some people have shunned him because of the derogatory posts and do not want to be associated with "criminals" fleeing from Canada.
- [47] In 2016 or 2017, Mr. Sauck was diagnosed with depression and anxiety. He says such resulted from the defendant's actions but there is no medical evidence to suggest the causative relation between the allegations in the Notice of Civil Claim, which commence as of 2019, and the depression diagnosed two to three years before.
- [48] Regardless of whether the posts are ordered to be taken down, which I have now ordered, Mr. Sauck suggests that his life has been "irreparably broken".

Mr. Sauck's Position

- [49] Mr. Sauck asserts entitlement to general, aggravated and punitive damages in respect of the defamatory posts as well as general, aggravated and punitive damages in favour of both plaintiffs for the trespasses by the defendant upon both the commercial and residential premises.
- [50] Default judgment was granted against the defendant on March 9, 2022, requiring the defendant to pay the plaintiffs' damages and costs to be assessed. Being in default, the defendant is not entitled to receive notice of the application: *National Home Warranty Group Inc. v. Red Rose Appliances & Plumbing Ltd.*, 2018 BCSC 234 at para. 38.
- [51] Rule 3-8(13) provides:
- (13) If a plaintiff has obtained judgment under subrule (5) or (6), the plaintiff may, instead of proceeding to trial to assess the damages or the value of the goods, apply to the court, and, on that application, the court may
- (a) assess the damages or value of the goods summarily on affidavit or other evidence,
 - (b) order an assessment, an inquiry or an accounting,
 - (c) give directions as to the trial or hearing of the assessment or determination of value, or
 - (d) make any other order the court considers will further the object of these Supreme Court Civil Rules.
- [52] Here, the plaintiffs have proceeded, in effect, by way of summary trial on the issue of damages. In the extensive affidavit he has filed, Mr. Sauck has provided evidence of the nature of the defamatory remarks and the fact they are ongoing. Indeed, their frequency has increased since this action was commenced.

- [53] I am satisfied that the posts, posted by the defendant to Google Groups are defamatory in nature entitling Mr. Sauck to damages.
- [54] By virtue of the nature of the defamation, the apparent lack of any underlying reason for the defendant to even hold a reasonable belief in the truth of the remarks, the absence of an apology, the ongoing nature of the defamation and its escalating frequency, I agree that Mr. Sauck has established entitlement to general damages and aggravated damages. I will deal with the question of punitive damages later in these reasons.
- [55] As was noted by Justice Matthews in *Port Alberni Shelter Society v. Literacy Alberni Society*, 2021 BCSC 1754 [Port Alberni]:
- [29] While default judgment is conclusive of the claim set out in the notice of civil claim absent an obvious flaw or absurdity (*E. Sands and Associates Inc. v. Dextras Engineering & Construction Ltd.*, 2009 BCSC 42; see also *E. Sands and Associates Inc. v. Dextras Engineering & Construction Ltd.*, 2008 BCSC 1809, citing *Poznecoff v. Binning*, [1998] B.C.J. No. 613, 19 C.P.C. (4th) 347, paras. 10-14), on assessing damages, the court is permitted to make a reasonable inquiry into the nature and basis of the claim, especially where there are several causes of action pleaded in the alternative (*Trustees of the Healthcare Benefit Trust v. Pearce*, 2012 BCSC 1235, chambers master at para. 15 cited by Madam Justice Forth in *McMillan v. Bergman*, 2021 BCSC 1360; and Madam Justice Maisonville in *Marshall v. McCormick*, 2018 BCSC 1398).
- [30] I conclude that absent a fundamental legal flaw in the claim, liability has been merged in the default judgment. However, where there is more than one cause of action that has been pleaded in the alternative, a default judgment may not equip the court to assess damages because the alternative causes of action may not all be the bases on which judgment was obtained and the facts which pertain to some of them may not pertain to damages or the damages may differ depending on the cause of action. This is particularly problematic if the alternative causes of action are true alternatives; i.e., if one is made out, the other cannot be.
- [56] Here the causes of action are not in the alternative but, rather, cumulative.
- [57] Further in *Port Alberni*, Matthews J. noted that in the assessment of damages once default has been taken the Court may base its findings on the assessment of the totality of the publications and their common defamatory theme: at para. 33. This was the approach adopted in *Hee Creations Group Ltd. v. Chow*, 2018 BCSC 260; *Newman et al v. Halstead et al*, 2006 BCSC 65; and *Loh v. Yang*, 2006 BCSC 1131.
- [58] In *Port Alberni*, Matthews J. went on to say:
- [34] Accordingly, the assessment of damages does not involve the question as to whether the defendants are liable for defamation but it does require findings about the defamatory nature of the pre-default judgment statements. In addition, I must determine whether post-default judgment statements are defamatory. The reasoning does not need to be based on an analysis of each alleged defamatory statement. Where, as here, there is an alleged campaign

and the statements are numerous and made as part of a consistent theme or themes, assessment of the statements as a whole and findings about their numerosity, duration, and overall tenor, is appropriate.

- [59] It is trite law to say that a defamatory statement is one which tends to lower the reputation of the person to whom it refers, or expose that person to hatred, contempt or ridicule.
- [60] Here the postings complained are clearly defamatory and constitute a "campaign" of harassment aimed at Mr. Sauck.
- [61] Defamation is a strict liability tort and it is unnecessary for Mr. Sauck to prove that the defendant intended to cause harm or was otherwise careless: see *Weaver v. Corcoran*, 2017 BCCA 160 at para. 70.
- [62] Publication is proven once Mr. Sauck establishes the defendant has conveyed a defamatory meaning to a single third party who has received it.
- [63] I am satisfied from the postings to the Google Group the defamatory remarks posted by the defendant were viewed, albeit not by a large audience according to the number of views recorded on the website. The number of views are seemingly recorded on the website and screen shots of the website were provided in evidence. Nonetheless there was publication and, additionally, I have the evidence of Mr. Sauck as to inquiries made about the online remarks including inquiries made by the ultimate purchaser of his former home.
- [64] Here, there is no evidence of an event that precipitated the commencement of the defamatory statements that might explain or mitigate the defendant's actions. It is clear from the history given that this has been an ongoing campaign stretching back many years. The complained of defamatory remarks begin in 2019. Despite evidence that Mr. Sauck engaged the defendant imploring him to stop, that tactic simply seemed to fuel the fire.
- [65] Similarly, issuance and service of the Notice of Civil Claim has increased the frequency, if not the derisiveness, of the further postings made by the defendant.
- [66] As did Matthews J. in *Port Alberni*, I conclude that the statements made by the defendant here are part of a defamatory campaign. Most of the comments, specifically that Mr. Sauck is a sexual predator, a potential serial rapist, being investigated by police, is dishonest and corrupt, associates with known gang members, and uses controlled substances, are all defamatory in their literal meaning and will require little by way of inferences to be drawn. Where inferences need to be drawn they are readily apparent from the context of the whole of the publications.
- [67] The nature of the defamation is extremely serious. The alleged criminal acts included possession of and sale of pornography and sexual crimes against children. As noted by Mr. Sauck, there are 14 pre-litigation postings and now 31 post-litigation postings all of similar nature.

[68] When Mr. Sauck was attempting to sell his former matrimonial home, the defendant posted indications to Google of Mr. Sauck's name directing viewers towards his defamatory commentary.

[69] In short, I treat this as a most serious and egregious, ongoing campaign of unwarranted defamatory remarks by the defendant. They have had a serious impact on Mr. Sauck.

General Damages

[70] General damages are to compensate the plaintiff for the insult and mental distress occasioned by the defamatory comments and, no doubt as is partially the motivation of Mr. Sauck here, to vindicate the defamed person's reputation.

[71] General damages are presumed from the publication of the defamatory statements because the impression left by a defamatory statement is difficult, if not impossible, to erase.

[72] As Mr. Sauck notes, merely removing the post will not remove them from the memories of those who have seen them.

[73] In the leading decision of *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 182, 1995 CanLII 59, the Supreme Court of Canada said that the following factors are to be considered when assessing general damages for defamation:

- a) the nature of the defamation;
- b) the plaintiff's conduct, position and standing;
- c) the mode and extent of publication;
- d) the absence of any retraction or apology; and
- e) the whole of the defendant's conduct from the time of the publication to the end of the trial.

[74] In these circumstances, a consideration of all of those factors combined militates in favour of significant damages.

[75] As noted, the defamation is at the highest end of the range for reasons above stated. I am satisfied that Mr. Sauck's conduct and position in society prior to the commencement of the defamatory statements was that of a successful and reputable businessman.

[76] The mode and extent of publication are, as has been commented on in other cases, at the high end because of the insidious nature of the Internet. The number of views does not, in my opinion, inform the extent to which the malicious statements made by the defendant have been spread in the community. Mr. Sauck's employees and some of his customers have all come to learn of them.

[77] Mr. Sauck deposed to comments from customers and community members in Denison, Iowa, which lead me to conclude that the publication of the remarks have gone far beyond the number of viewers of the post itself, some as low as 45 to 50.

- [78] Despite the commencement of these proceedings, there has been no retraction or apology and, what is worse, the defendant's conduct since the commencement of the litigation, that is that from the time of publication to the "end of trial", has been an increase in frequency of the postings and a mocking of both Mr. Sauck for his court proceedings and of the proceedings themselves by implication.
- [79] In *Hudson v. Myong*, 2020 BCSC 517 at para. 160, Justice Douglas concluded the following features, I'll name only those present here, militate in favour of a high general damages award:
1. allegations of criminal conduct;
 2. extensive circulation of the defamatory statements within a particular chosen audience;
 3. continuing to make defamatory statements after receiving a cease-and-desist letter warning that previous statements were false and defamatory. Here I conclude that Mr. Sauck reaching out to the defendant asking him to refrain from making these statements constitutes such "cease-and-desist" letter;
 4. the presence of malice. I infer malice from the nature of the commentary made, its ongoing nature and the attacks on anyone who posted on Google Groups referencing and/or defending Mr. Sauck's position;
 5. the speed scope and pervasiveness of Internet-based publication; and finally
 6. the absence of an apology.
- [80] While I do not find that Mr. Sauck has proven a diminution of the value of his property by virtue of the remarks, breakdown of his marriage attributable to stress caused to both he and his wife/former wife because of the remarks, or that his depression diagnosed in 2017 is as a result of the remarks, I nonetheless find that the Mr. Sauck's general overall mental well-being as described by him in his affidavit, not surprisingly has been diminished by virtue of the defendant's campaign against him.
- [81] Mr. Sauck suggests that the proper award for general damages in the circumstances of the case before me is \$250,000.
- [82] Various authorities were cited to me where damages ranged from \$75,000 to \$150,000. The latter appears to be the high-water mark without considering aggravated and/or punitive damages. The most similar case in terms of the allegations is *Griffin v. Sullivan*, 2008 BCSC 827.
- [83] In *Griffin*, the Court awarded general damages of \$100,000 for remarks, not unlike those made here, that the Court characterized as countless repetitions of monstrous and outrageous allegations: at paras. 96-97. The frequency and repetition of the publications were found to be a serious aggravating factor: *Griffin* at para. 98.

[84] I note that Griffin was decided in 2008. Allowing an inflationary impact on an award made then as opposed to 2022, I award the sum of \$125,000 as general damages.

[85] Mr. Sauck also seeks aggravated damages.

Aggravated Damages

[86] Aggravated damages were discussed by Douglas J. in Hudson:

[189] Aggravated damages are awarded in defamation when the defendant's conduct is been high handed or oppressive, with the result of increasing the plaintiff's humiliation and anxiety arising out of the defamatory statements. In order to assess damages, a court must consider the entire conduct of the defendant from before publication of the defamatory statement to the conclusion of the trial.

[87] In Hill, the Supreme Court of Canada quoted Philip Lewis, *Gatley on Libel and Slander*, 8th ed. (London: Sweet & Maxwell, 1981) at 593-94, regarding the task for aggravated damages in the context of the defamation claim:

1452. Aggravated damages. The conduct of the defendant, his conduct of the case, and his state of mind are thus all matters which the plaintiff may rely on as aggravating the damages. "Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation." "In awarding 'aggravated damages' the natural indignation of the court at the injury inflicted on the plaintiff is a perfectly legitimate motive in making a generous, rather than a more moderate award to provide an adequate solatium. . . that is because the injury to the plaintiff is actually greater, and, as the result of the conduct exciting the indignation, demands a more generous solatium."

[88] Here, in considering whether or not an award of aggravated damages is appropriate, I have factored into my deliberations the fact the defendant has not apologized for his actions but, instead, escalated his campaign of defamatory comments since the action was commenced. The defendant here has demonstrated a reckless disregard for the truth.

[89] Malice can be established either by showing a defendant knew that he was not telling the truth or was reckless in that regard. Here, there is no reasonable basis upon the evidence before me justifying a belief by the defendant that his allegations are true. Aggravated damages, like other damages, are assessed on a case-by-case basis. No two cases are alike.

[90] Mr. Sauck asserts that the defamatory campaign commenced in 2007 and has continued onward. That said, Mr. Sauck has only referenced the posts made by the defendant since 2019 to the commencement of the action.

- [91] Thereafter, I agree I am entitled to consider the ongoing publication of 31 further posts, most or all of which are defamatory to the same extent or greater than those on which Mr. Sauck relies in the Notice of Civil Claim.
- [92] Here, Mr. Sauck suggests an award of aggravated damages in the amount of \$100,000. Referring to the cases cited to me, which include the following: *Barrick Gold Corp. v. Lopehandia*, [2004] O.J. No. 2329 (C.A.), 2004 CanLII 12938; *Brown v. Cole*, [1998] B.C.J. No. 2464 (C.A.), 1998 CanLII 6471; *Newman; John v. Kim*, 2007 BCSC 1224; *Griffin; Elkow v. Sana*, 2018 ABQB 1001; *Hudson*; and *Port Alberni*.
- [93] In each of each of those cases, save *Barrick*, either aggravated or punitive damages were awarded. Aggravated damages ranged between a low of \$25,000 to \$75,000. Here, Mr. Sauck says the appropriate award would be \$150,000.
- [94] I am satisfied that an award of \$75,000 meets the objectives of an award of aggravated damages having found the presence of the factors noted above and their considerable impact upon the personal plaintiff.

Punitive Damages

- [95] Finally, I now go on to consider punitive damages.
- [96] Such were discussed in *John*, where at para. 102, Justice Burnyeat stated the following:
- [102] Taking into account the aggravating factors set out above, I am satisfied that the Plaintiff, Chin Hui Pak, should be entitled to damages in the amount of \$20,000.00 against each of the Defendants. The initial defamatory comments made about Ms. Pak were not expressly repeated to any great extent and there are few, if any, additional outrageous allegations made against her. The Plaintiff, Gae Nam John, will be entitled to damages in the amount of \$35,000.00 against each of the Defendants. In awarding that sum to Mr. John, I take into account the continuing defamation and the aggravating factors noted above.
- [97] Here, for reasons stated, I find the defendant's behaviour to have been egregious, high-handed, oppressive, reckless, spiteful, and vicious thus satisfying the test for punitive damages.
- [98] Nonetheless, as discussed with counsel, a global approach to damages is necessary.
- [99] Here, given the awards for general and aggravated damages, I award punitive damages of \$10,000.
- [100] Earlier, at the conclusion of submissions and in discussion with counsel, I made the orders by way of injunctive relief sought in the Notice of Application.
- [101] After discussion with counsel and review of the decision in *Port Alberni*, paras. 166-172, I am satisfied I have jurisdiction to make the orders for injunctive relief.

[102] The Rule itself provides I might make any other order I consider will further the object of the Supreme Court Civil Rules: see R. 3-18(13)(d).

Trespass

[103] I am satisfied that the default judgment allows me to consider damages for the trespasses alleged and specified in the Notice of Civil Claim. They are four in number. Three of the trespasses were committed against the corporate plaintiff with consequent damage set out in the affidavit of Mr. Sauck.

[104] The other trespass was as specified above at the personal residence of Mr. Sauck. He deposed that he had to pay a \$500 deductible towards the repair of his vehicle, the windshield wipers and two slashed tires.

[105] Mr. Sauck referred me to a number of authorities respecting damages for trespass. Amongst them is *Sott v. PDF Training Inc.*, 2004 BCSC 1646. In *Sott*, Justice Nielson made the following remarks respecting the assessment of general damages for trespass:

[204] An award of damages for trespass should restore the plaintiff as nearly as possible to the same position it would have been in had the trespass not occurred.

[205] Typically, damages are measured either by the diminution in value of the land, or by the cost of restoration to its original condition. In some situations, consequential losses have also been awarded: *Maeckelburg v. Radium Waterworks District* (1982), 24 L.C.R. 286 (B.C.S.C.), *aff'd* (1983), 53 B.C.L.R. 90 (C.A.); *McLachlan v. CIBC et al* (1987), 13 B.C.L.R. (2d) 300 (S.C.), *aff'd* (1989), 35 B.C.L.R. (2d) 100 (C.A.) [*McLachlan*].

[207] An award of damages is an assessment, based on the evidence available. It is not a precise mathematical calculation: *McLachlan* (B.C.S.C.) at 197-198, and (B.C.C.A.) at 695. The overriding requirement is that it be reasonable, practical, and fair to all parties: *Kates v. Hall* (1991), 53 B.C.L.R. (2d) 322 (C.A.) at 330-331 [*Kates*].

[106] Here, apart from the actual damage to the commercial property, there is no diminution in the value of the land or cost to restore it to its original condition (save for the window replacement).

[107] Innovative, claims consequential losses of revenue for the closures during the days the windows were being repaired. The authorities make clear that the assessment of damages is not a mathematical calculation and that the overriding requirement is that it be reasonable, practical and fair to all of the parties. This includes the defendant.

[108] The defendant's actions throughout have been egregious. The impact of the defamation on Mr. Sauck has been adequately dealt with by way of a compensatory award, an aggravated award and an award for punitive damages.

- [109] In my mind there is no need to repeat or duplicate those damages here. The incident was an act of vandalism on Mr. Sauck's residence. It was brief in nature. His ill-advised actions in chasing after the defendant with any resultant injuries are not causally related to the actual act of trespass.
- [110] For the trespass against the personal defendant, I award the sum of \$5,000 plus \$500 special damages in respect of the repair to his vehicle.
- [111] For the corporate plaintiff, I award sum of \$15,000 by way of an award of general damages to reflect the ongoing nature of the trespass and more extensive damage done.
- [112] Further, I allow special damages in the amount of \$3,000 for the repair of broken windows on those three separate occasions they were broken.
- [113] I award the further sum of \$10,000 representing the loss of revenue claim by Innovative. Such is, admittedly, an estimate rather than a mathematical calculation. Loss of revenue; the benchmark used by the plaintiff, does not equate to loss of profit. It is unclear whether employees were paid on that day and unclear whether business that would have come in on a day the business was closed would return on another day when it was opened. As such, \$10,000 more fairly represents Innovative's loss.

Summary

- [114] In summary, I award the following sums to the plaintiffs:
- a) \$125,000 in general damages to Mr. Sauck;
 - b) \$75,000 in aggravated damages to Mr. Sauck;
 - c) \$10,000 in punitive damages to Mr. Sauck;
 - d) \$5,000 in general damages and \$500 in special damages to Mr. Sauck as a result of the defendant's trespass of his matrimonial home;
 - e) \$15,000 in damages to Innovative as a result of the defendant's trespass of the Corporate Office;
 - f) \$3,000 in special damages to Innovative; and
 - g) \$10,000 for loss of profit to Innovative.
- [115] In total, Mr. Carr is ordered to pay \$253,500 to the plaintiffs.

Costs

- [116] The plaintiffs are entitled to costs of the action at Scale B.

"Harvey J."

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