IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2013-404-5218
[2024] NZHC 228

BETWEEN	MATTHEW JOHN BLOMFIELD Plaintiff
AND	CAMERON JOHN SLATER First Defendant
AND	SOCIAL MEDIA CONSULTANTS LIMITED (IN LIQUIDATION) Second Defendant

Hearing:	4 and 5 September 2023
Representation:	Plaintiff self-represented W Akel, counsel assisting the Court
Judgment:	20 February 2024

JUDGMENT OF JOHNSTONE J

This judgment was delivered by me on 20 February 2024 at 3pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

[1] In 2010, Matthew Blomfield was an entrepreneur engaged in what had been a range of successful businesses. But by that year, soon after the Global Financial Crisis (GFC), he had overextended. His personal guarantees were called upon. A proposed creditor compromise was unsuccessful, and in July he entered bankruptcy.

[2] One of the businesses with which Mr Blomfield had been involved was the Hell Pizza franchise that had been established by Warren Powell, Stuart McMillan and Callum Davies. Mr Blomfield's involvement included him managing Hell Pizza's public relations and some operational aspects, and owning five franchise stores.

[3] By the time of Mr Blomfield's bankruptcy, his relationship with Mr Powell had been close. However, it commenced to come undone. For example, Mr Blomfield was bitterly disappointed when Mr Powell did not support the creditor compromise. By 2011, they were no longer communicating directly.

[4] Cameron Slater operated the website www.whaleoil.co.nz through his company Social Media Consultants Limited. I refer to Mr Slater, his company, and the blog published on their website jointly, as Whale Oil. By May 2012, Whale Oil's website claimed it had around 317,000 visitors per month. Assuming that claim is correct, it was the highest ranking blog site in New Zealand by both page views and visitors.

[5] In May and June 2012, Whale Oil published a series of blog posts that I find were designed unfairly to destroy Mr Blomfield's reputation, both professionally and personally. Whale Oil based its series of posts on material held within a filing cabinet of documents and a hard drive, left by Mr Blomfield in an office he had shared with Mr Powell. Whale Oil has never fully explained the circumstances in which it gained access to this material.

[6] The posts were based on the material in the sense that they described its contents and even published selected extracts. But the posts proceeded repeatedly to make sweeping allegations of dishonesty, corruption, fraud, and other forms of criminality, by constructing an account of what Whale Oil asserted should be drawn from the material. These allegations misrepresented the material, in ways ranging

from merely inviting unnecessary inferences, to blatant fabrication of unsupported meanings.

[7] Mr Blomfield sought to commence defamation proceedings in the District Court at Manukau in 2012. More than 11 years later, this judgment determines the matter.

Summary of delays

[8] Soon after Mr Blomfield commenced the case, time was lost when Whale Oil sought unsuccessfully to appeal an order requiring it to identify its sources, first by appealing to this Court and then by seeking leave to appeal to the Court of Appeal. In the meantime, the defamation proceeding was transferred to this Court. But it continued to be beset by delays, largely caused by Whale Oil.

[9] By the later part of 2017, Whale Oil had abandoned its opposition to the identification order, and Heath J had dismissed an application by Whale Oil seeking that the proceeding be struck out. His Honour disagreed with Whale Oil's claim that Mr Blomfield had caused significant delay, finding Whale Oil substantially to blame.[1]

[10] In May 2018, Lang J declined an application by Mr Blomfield for summary judgment, and directed that Whale Oil should have a final opportunity to amend its pleadings so that its claims that its posts were either true, or if not, at least amounted to honestly held expressions of opinion, were set out separately as required by s 40 of the Defamation Act 1992.[2]

[11] Whale Oil did not comply with Lang J's directions. A trial set for October 2018 did not proceed. Despite the trial Judge refusing Whale Oil leave to pursue a defence set out in non-compliant pleadings, Whale Oil obtained adjournment of the trial on the basis it would appeal against that refusal.

[12] In early 2019, Mr Slater was adjudicated bankrupt, Social Media Consultants Limited entered liquidation, and their appeal to the Court of Appeal was abandoned.

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1 *Blomfield v Slater* [2017] NZHC 1654 at [28].
2 *Blomfield v Slater* [2018] NZHC 1099 at [75].

In April 2019, Mr Slater informed the Court that he intended to take no further part in the proceeding, and he has not done so since. Justice Davison granted leave permitting the proceeding to continue despite the bankruptcy and liquidation.[3]

[13] A trial set for May 2020 was abandoned for reasons related to the COVID-19 pandemic. After that, Mr Blomfield did not press for the allocation of a fixture, and further, he lost the assistance of counsel.

[14] An undefended trial took place before me in this Court on 4 and 5 September 2023. I was assisted by William Akel, barrister, who had been appointed amicus curiae. Mr Akel advanced submissions and cross-examined the evidence given and called by Mr Blomfield, who acted on his own behalf. At the conclusion of the hearing on 5 September 2023, I reserved my judgment.

The structure of this judgment

[15] This judgment is structured as follows:

(a) First, I provide an outline of the principles guiding determination of the question whether a publication is defamatory.

(b) Then I describe the nine posts from within the series upon which Mr Blomfield bases his claims in defamation. And, applying the principles, I make findings about their defamatory nature.

(c) Next, I assess the appropriate measure of compensatory damages, including by way of aggravation of the initial harm caused to Mr Blomfield's reputation.

(d) Finally, I consider whether it is appropriate to award exemplary damages.

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3 *Blomfield v Slater* CIV-2023-404-5218, 4 April 2019.

Principles

[16] To succeed with a proceeding alleging defamation, the plaintiff must prove on the balance of probabilities that the statement(s) at issue:

(a) identified the plaintiff;

(b) were published by the defendant; and

(c) were defamatory.

Identification of the plaintiff

[17] The test for identification is whether reasonable persons acquainted with the plaintiff would reasonably believe that the words referred to them.[4] Here, Whale Oil's pleadings accepted that the posts identified Mr Blomfield.

Publication by the defendant

[18] In the context of publication via internet, particular proof is increasingly required.[5] In other jurisdictions, it is insufficient to merely show that a publication is available for viewing on the internet and some positive evidence of engagement is required.[6] The approach in New Zealand is unresolved, with at least one High Court Judge being prepared to presume that a blog is read once posted, subject to the defendant disproving the reading or listening that is essential to publication.[7]

[19] Here, Whale Oil's pleadings, again unsurprisingly, accepted the fact of publication.

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4 *David Syme & Co v Canavan* (1918) 25 CLR 234 at 238; see *CR Symmons* "The Problem of hidden Reference in Defamation" (1974) 3(1) Anglo-Am LR 98; and, see also, *Hyams v Peterson* [1991] 3 NZLR 648 (CA) at 654.

5 In the United Kingdom, the presumption of substantial publication does not apply in respect of internet publications: *Al Amoudi v Brisard* [2006] EWHC 1062 (QB), [2007] 1 WLR 113. In Australia, the plaintiff bears the burden of proof to show that at least one person, other than the plaintiff, viewed the publication: *MacDonald v Australian Broadcasting Corp* [2014] NSWSC 206 at [27]. For Canada, see *Crookes v Newton* 2011 SCC 47, [2011] 3 SCR 269.

6 In *Webb v Jones* [2021] EWHC 1618 (QB) at [44]–[50], the Court approved evidence of actual reactions to allegedly defamatory tweets in a thread, such as "shocked face" emoji.

7 *Sellman v Slater* [2017] NZHC 2392, [2018] 2 NZLR 218 at [39].

Defamatory statements

[20] In a proceeding for defamation, the plaintiff is required to particularise by way of pleading every statement that is alleged to be defamatory and untrue (the pleaded meanings),[8] except that where a pleaded meaning is evident from the statement itself, a particularised meaning is not required.[9] Where a meaning other than the natural and ordinary meaning is pleaded, a plaintiff must give further particulars specifying:[10]

(a) the persons or class of persons to whom the defamatory meaning is alleged to be known; and

(b) the other facts and circumstances on which the plaintiff relies in support of the plaintiff's allegations.

[21] An initial focus will be on whether the pleaded meanings are made out. In the context of a jury defamation trial, the role of the judge is to assess whether the statements are capable of bearing the pleaded meaning and the role of the jury is to assess whether they do in fact bear such a meaning.[11] In the present proceeding, I must perform both roles.

[22] There is only one possible "natural and ordinary" meaning of a statement.[12] The meaning that the judge or jury should derive is the one that "under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense".[13]

[23] The pleaded meanings must then be assessed in light of their context,[14] to determine whether they are such that the statement(s) at issue are defamatory. A defamatory statement[15] is one that tends to lower the plaintiff in the estimation of

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8 Defamation Act 1992, s 37(1).
9 Section 37(2).
10 Section 37(3).
11 *Capital & Counties Bank Ltd v Henty & Sons* (1882) 7 App Cas 741 (HL); and *Hill v National Bank of New Zealand Ltd* [1985] 1 NZLR 736 (HC) at 748.
12 *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 (HL) at 71.
13 *Capital & Counties Bank Ltd v Henty*, above n 11, at 745.
14 *Broadcasting Corporation of New Zealand v Crush* [1988] 2 NZLR 234 (CA) at 238.
15 There are two other commonly accepted definitions: "A false statement about a person to his or her discredit" (*Youssoupoff v Metro-Goldwyn-Mayer* (1934) 50 TLR 581 (CA) at 584) and "A publication without justification which is calculated to injure the reputation of another by exposing

reasonable people,[16] or tends to make others shun and avoid the plaintiff.[17] Context may save a statement from being defamatory or render defamatory an otherwise innocent statement.[18]

[24] The following considerations and tests are relevant to the assessment of the finding of a defamatory meaning:[19]

> (a) The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?
>
> (b) The reasonable person reading the publication is taken to be one of ordinary intelligence, general knowledge and experience of worldly affairs.
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> (c) The Court is not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication.
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> (d) The meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication. The ordinary person has considerable capacity for reading between the lines.
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> (e) But the Court will reject those meanings which can only emerge as the product of some strained or forced interpretation or groundless speculation. It is not enough to say that the words might be understood in a defamatory sense by some particular person or other.
>
> (f) The words complained of must be read in context. They must therefore be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared. … a jury cannot be asked to proceed on the basis that different groups of readers may have read different parts of an article and taken different meanings from them: *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65; [1995] 2 All ER 313 (HL) at p 72; 318.

[25] The law presumes the pleaded meanings to be both false and harmful until the defendant proves otherwise. Commonly, defamatory pleadings will plead statements

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him or her to hatred, contempt or ridicule" (*Parmiter v Coupland* (1840) 6 M & W 105, 151 ER 340 (Exch) at 109, 342). Although substantially similar to the definitions I have adopted, each contemplates and includes the absence of a defence as a necessary part of the definition and therefore are conceptually flawed.

16 *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240

17 *Youssoupoff v Metro-Goldwyn-Mayer*, above n 15, at 587.

18 See, for example, *Gwynne and Small v Wairarapa Times-Age Co Ltd* [1972] NZLR 586 (SC).

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

are false and malicious, however, these are not matters for the plaintiff to prove.[20] Instead, to displace the presumption of falsity, a defendant will need to establish the defence of truth.[21] And to displace the presumption of harm, a defendant will need to demonstrate that the statements carried no more than minor harm.[22]

Defamatory nature of blog posts

Post One: "Who really ripped off KidsCan?"

[26] Post One was published under the above title on 3 May 2012. It commenced by referring to a prior Whale Oil post about Hell Pizza getting "into a spot of bother" with the children's charity KidsCan. Indeed, Post One contained a link to the prior post. Under the title "Go to Hell", the prior post asserted that Hell Pizza had "rip[ped] off" KidsCan, and referred to its "boss", Warren Powell, as "scum".

[27] Post One then stated:

> What I am about to reveal is the real story behind the scam at KidsCan and the involvement of Matt Blomfield in collusion with [another man] to throw another director under the bus for the whole sorry issue.

[28] The post then depicted images of various emails between personnel at Hell Pizza and at KidsCan, sent in relation to the involvement of Hell Pizza in a telethon run by KidsCan. The emails addressed the topics of a Hell Pizza van being positioned to receive valuable television coverage while making and distributing pizza during the event, and of how its costs might be covered, how its raised funds might be donated, and how a sponsorship fee might be paid. The email sequence indicates that expectations on these topics were not met. And, that there was considerable disharmony between Hell Pizza and KidsCan prior to matters being resolved.

[29] However, Post One takes the form of a narrative, adding Whale Oil's editorial comment to explain what readers should take from the emails. The essence of Whale Oil's message is that Mr Blomfield deceived KidsCan to its financial

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20 *Leersnyder v Truth (New Zealand) Ltd* [1963] NZLR 129 (SC).
21 Defamation Act, s 8.
22 *Sellman v Slater*, above n 7, at [60], cited with approval in *Craig v Slater* [2020] NZCA 305 at [44]–[45].

disadvantage, and that Mr Powell was "made the fall boy, set up by [Mr] Blomfield and [the other man] to cover their own incompetence".

[30] Whale Oil's narrative of the emails is strained and unrealistic. The emails simply do not support Whale Oil's message. An assiduous reader would not have given it credence. Amongst the numerous comments added to the post prior to it being taken down, were a small number pointing out "there is no story here", and "some of the so-called facts on this site are very poorly researched".

[31] But the bulk of the comments praise what they appear to regard as valuable work by Whale Oil. And the few commentators who point out the lack of justification for Whale Oil's narrative are themselves criticised in return, at times viciously.

[32] Overall, noting that "what matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in [their] head", I find that Post One carried the following pleaded meanings:

(a) Mr Blomfield participated in a conspiracy to defraud a charity, by depriving it of $10,000 that had been pledged to it and by seeking to shift the blame unfairly onto an innocent third party, Mr Powell;

(b) Mr Blomfield held himself out to be Mr Powell, and sent emails pretending to be Mr Powell; and

(c) Mr Blomfield caused a journalist to publish stories based on untruths.

[33] These meanings are in my view false, and seriously defamatory of Mr Blomfield.

[34] Mr Powell has never been a party to this proceeding, and has not sought or been permitted an opportunity to respond to Mr Blomfield's criticisms. I make no finding in respect of his conduct.

[35] But in my view there can be no coincidence that:

(a) Mr Blomfield fell out with Mr Powell, and Whale Oil criticised Mr Powell;

(b) Whale Oil gained access to Mr Blomfield's hard drive and filing cabinet that had been left with Mr Powell; and

(c) Whale Oil then commenced a campaign to destroy Mr Blomfield's reputation, purporting to rely on those materials but falsely misrepresenting them as showing that it was Mr Blomfield rather than Mr Powell who should have been criticised.

Post Two: "Knowing Me, Knowing You – Matt Blomfield"

[36] Post Two was also published on 3 May 2012, but under the above title. It referred to earlier posts about Hell Pizza and asked "[j]ust who is Matt Blomfield?"

[37] Immediately, Post Two asserted that "Matt is Psychopath" and added that "his pattern of behaviour fits the text book description". The assertion was linked to a New Zealand Police form relating to its diversion scheme which permits those charged with minor offences to avoid prosecution upon admitting responsibility and meeting certain conditions. The form was completed in terms indicating that in April 2008, Mr Blomfield received diversion in relation to an assault upon the payment of $300 to Victim Support.

[38] Post Two went on to assert that Mr Blomfield loves extortion and enjoys being a pathological liar. That assertion was linked to an email sent by Mr Blomfield to a person who appears to have complained about Hell Pizza. It was copied to Mr Powell and another person. The email contained the statement "I am the owner of Hell", and was highly abusive of the complainant. However, the use of blue font and a signature line in Mr Powell's name indicated that Mr Blomfield had copied and pasted the abusive substance of the email from another message sent by Mr Powell.

[39] Quite obviously, by his email, Mr Blomfield was purporting to relay (and arguably give voice to) the message, not asserting he was the owner. Yet in Post One,

linked to Post Two, Whale Oil wrote that Mr Blomfield told people he was Hell's owner and pretended to be Mr Powell.

[40] I find that Post Two was again false and seriously defamatory of Mr Blomfield, its meaning, in particular that Mr Blomfield "is a psychopath" and a "pathological liar" being evident from its text.

Post Three: "Ghostwriting for Repeaters 101"

[41] Post Three was published on 8 May 2012, under the above title. It refers to "bad news stories about Hell Pizza" making for "good copy". And it asserts "that is exactly what Matt Blomfield did… copy, loads of internal emails to tame and lazy journalists".

[42] Post Three then refers to an email sent to Mr Blomfield on 12 March 2010 by a journalist at the Herald on Sunday. The journalist mentions having written a story "for Sunday, so hope I don't see it anywhere tomorrow".

[43] The post asserts that the journalist had written an article based on information Mr Blomfield had sent her, comprised of confidential court documents, and that the journalist "had a scoop, nicely packaged and fed to her by a Hell insider so that the story could be painted about a dysfunctional company".

[44] Post Three then contains a link to the journalist's Herald on Sunday article, published two days after her email to Mr Blomfield. The article refers to "court papers" having been filed by the company that had purchased the Hell Pizza business from its founders, Mr Powell and two others. The article refers to the company having sold Hell Pizza back to its founders, subject to retention of a single Hell Pizza franchise in Albany. The dispute before the court related to whether the company might sell the Albany franchise as had been agreed, or should suffer its termination, having damaged the Hell brand and caused losses.

[45] I find the natural and ordinary meaning of Post Three, asserting that Mr Blomfield had sent the journalist confidential court documents, to be evident and to be false and moderately defamatory of Mr Blomfield.

Post Four: "Blomfield Files: Free to a Good Home"

[46] Post Four was published on 14 May 2012, under the above title. Whale Oil writes "I have now copied all of the Blomfield Files on to a portable drive. It is just over 1Tb for one terabyte of juicy dirt". The post contains a photograph of the packaging for a two terabyte Seagate portable drive. The words "Blomfield emails" are handwritten on the packaging.

[47] Post Four then sets out a list of 16 mostly businesspeople "plus a famous All Black" who are described as "just some of the names of those who have aided and abetted Matt Blomfield's trail of destruction through business circles nationally". Whale Oil writes "[d]rugs, fraud, extortion, bullying, corruption, collusion, compromises, perjury, deception, hydraulic-ing … its all there". The post indicates that the drive is "available to any reputable journalist who calls", adding "I have taken the liberty of excluding the large amount of illegal movies and homemade porn that he had collected. (yuk)".

[48] Plainly, Post Four is seriously defamatory in its evident, natural and ordinary meaning. As indicated above, Whale Oil asserted, but failed following an extended opportunity properly to plead, that each of its posts were true or a matter of honest opinion. It never came close to substantiating any such notion. It follows that I have no difficulty finding Post Four to be false.

Post Five: "Blomfield Files: The Compromise"

[49] Post Five was published on 15 May 2012, under the above title. It relates to the appointment of Time Capital NZ Limited, a business advisory firm, to propose a formal Creditors Scheme of Arrangement in preference to Mr Blomfield's bankruptcy in February and March 2010.

[50] Post Five includes images of emails between Mr Blomfield, his lawyer (Michael Alexander), and the directors of Time Capital, on the topic of how Time Capital's appointment might be communicated to creditors. The emails indicate that on 17 February 2010, Mr Blomfield suggested he might email his creditors for the purpose of introducing Time Capital, and that Time Capital responded by observing

that was not "a good idea". Instead, Time Capital proposed that Mr Alexander should write to creditors, following up a prior settlement offer he made to them on Mr Blomfield's behalf, with advice that his firm, Knight Coldicutt, had commissioned Time Capital to review and confirm the creditors' position. Mr Alexander adopted Time Capital's suggestion, sending the email it had proposed to Mr Blomfield's creditors on 18 February 2010.

[51] Whale Oil invites readers to conclude that the emails show Mr Alexander "essentially cooking up a trustee supposedly to act on behalf of the creditors … surely this is a conflict interest … to not propose but facilitate the engagement of the creditor trustee". In doing so, Whale Oil observes that Knight Coldicutt, as a creditor of Mr Blomfield, was in a position to appoint a creditors' trustee, but overlooks that the emails demonstrate he openly advised creditors that he had done so.

[52] In any event, Post Five concludes by publishing an image of an email from Mr Blomfield to Time Capital's directors dated 17 February 2010 at 2.29 pm, headed "money in your account gents I will do anoth lots soonish". That email is introduced by the concluding paragraphs of Post Five as follows:

> Now all of that becomes very interesting with this email from Matt Blomfield … where he pays Time Capital $10,000 that same day they are appointed as the creditors' trustee … What could possibly warrant that payment? Is it just coincidental that prior to this being paid Tom Wilson didn't want to do this deal. Mike Alexander was copied on the email involving the payment. Note that Blomfield says he will send more … how much and when?
>
> It appears that Time Capital have taken a financial inducement to represent creditors as their trustee. No wonder not a single cent of the $3.5M has been recovered.

[53] That final paragraph carries the implication that it was at least morally, if not legally, inappropriate for Time Capital to be paid in its role as creditor representative. But despite the tone of the words "financial inducement", I consider that a reasonably well-informed reader would interpret them literally as describing nothing more than "payment" for professional services, a consequence of Time Capital's involvement that was entirely to be expected, and therefore not defamatory.

[54] However, Mr Blomfield's pleading alternatively claimed that Post Five asserted and would have been understood to mean that he paid $10,000 to Time Capital by way of a bribe or inducement of some sort. I consider that is indeed how Post Five would have been understood (and indeed what was intended by it).

[55] On the basis of that intended meaning, Post Five was false and seriously defamatory.

Post Six: "Blomfield Files: The Perfect Storm"

[56] Post Six was published on 16 May 2012, under the above title. It described itself as "the start of a series of posts about the Storm Group and Matt Blomfield, [Mr Blomfield's brother Dan] and their theft of assets".

[57] Post Six was drawn from a series of emails between Mr Blomfield and the liquidator of a group of companies associated with an individual named Carl Storm. The emails discuss various attempts to recover business chattels in which a finance company held security interests. Mr Blomfield asserts that he has been assisting in the process. The liquidator expresses frustration and says that he will be referring the matter to the police. At a later point in the email series, the liquidators refer to visiting business premises to find that two desks had been stolen along with other property, and asserts that Mr Blomfield needs to be a little less reckless. Yet later, Mr Blomfield emails the account he had received from his brother as to how he had dealt with various business chattels following Mr Storm's departure from the business, shortly before Christmas, without paying Mr Storm's employees (including Mr Blomfield's brother). The liquidator responds, and the email chain concludes with him observing that he does not consider Mr Blomfield's brother's account credible, insisting that he requires contact addresses: for the person said to have possession of the chattels; for Mr Blomfield's brother; and for Mr Storm.

[58] As is apparent, and despite Mr Price's apparent frustration with other individuals, the email series does not support the notion of Mr Blomfield's own participation in the "theft of assets". Nevertheless, Whale Oil asserted that theft by Mr Blomfield (and others) was what the post was about. In this sense, it is false and seriously defamatory in its evident, natural and ordinary meaning.

[59] A later post, as had been foreshadowed, asserted that the chattels had been recovered as a consequence of Whale Oil providing information from Mr Blomfield's files. Whale Oil wrote that the chattels, a digger and truck, were recovered from an innocent party who had put up his boat as their purchase price and was now "out of pocket". This further post recorded "I'm not sure what the actual legal situation for [Mr] Blomfield is with this or what possible crimes have been committed. Conversion is certainly one that springs to mind".

Post Seven: "A Conversation with the Police"

[60] Post Seven was published on 18 May 2012, under the above title. It commenced by reminding readers of a linked story describing Mr Blomfield filing a complaint with the police about Whale Oil's receipt of stolen property taken from Mr Blomfield's office in February 2010. Post Seven went on to describe contact Mr Blomfield had received from an officer based on the North Shore. It referred to a burglary complaint having been filed by Mr Powell in respect of an office he occupied in Victoria Street, Auckland Central, and suggested that because Mr Blomfield's police complaint about Whale Oil mentioned the theft from "his office", then "once again Matt Blomfield has lied. Once again he has been found out".

[61] Post Seven went on to describe the police officer indicating Mr Slater's possession of copies of Mr Blomfield's stolen file would not be taken further as it was regarded as "a civil matter". Mr Slater added:

> No doubt the 142 emails that Matt Blomfield has previously sent to and mentioned North Shore Police that I discussed with [the police officer] may have given them an indication that Matt Blomfield has form when it comes to paying vexatious complaints with authorities. Matt Blomfield however should not expect this to be the end of his dealings with the police as there a small matter of conversion of a digger, truck & boat (still at large).

[62] In summary, Post Seven alleges that Mr Blomfield lied, made vexatious complaints to authorities, and was involved in the theft of a digger, truck and boat. I find those evident meanings to be false and seriously defamatory.

Post Eight: "Blomfield Files: Where is the Vengeance Money"

[63] Post Eight was published on 31 May 2012, under the above title. It refers to matters arising in the liquidation of Vengeance Limited, a company of which Mr Blomfield had been director and shareholder while it was engaged in a business related to Hell Pizza. The thrust of the post was that a business identified in the course of the liquidation as a substantial Vengeance debtor had in fact paid its debt. The post asserted that Mr Blomfield, with the assistance of an associate then operating the Vengeance accounts, had misapplied the payment by paying it to the creditor of another of Mr Blomfield's companies. The post displayed an image of an email exchange between Mr Blomfield and his associate at Vengeance, dated 9 July 2009, and asserted "according to this email exchange … the [debtor]'s money was paid to [the other company's creditor] to get them off Matt's back". In fact, Mr Blomfield's request of his associate was to transfer Vengeance funds (paid by its debtor) to another company "so that I can pay [that other company's creditor] tomorrow. Basically that's the profit from [the debtor] gone … but it does take [the creditor] with it". As can be seen, Mr Blomfield's request was not that his associate should pay the other company's creditor directly.

[64] The post goes on to assert that if Vengeance's liquidator was "doing his job properly instead of making excuses for [Mr Blomfield] then I am fairly certain that a few of these people would [be] facing some time in the pokie."

[65] I find that Post Eight carried the following pleaded meanings:

(a) Mr Blomfield misappropriated money paid to Vengeance and breached duties to pay Vengeance creditors;

(b) in doing so, Mr Blomfield committed criminal offences serious enough to justify terms of imprisonment.

[66] The post is false and seriously defamatory.

Post Nine: "It's a Kind of Mattjik"

[67] Post Nine was published on 6 June 2012, under the above title. It incorporates a video of Mr Blomfield and one of his business partners in a named company, sparring in a boxing ring. Mr Slater describes the video as "one of the more amusing things that I have found on the copy of Matt Blomfield's hard drive", and otherwise disparages Mr Blomfield's prowess. Mr Slater observes that Mr Blomfield's business partner is featured and writes:

> I will tell the story about how [Mr] Blomfield rorted $172,914.23 out of [their company] via factoring company Scottish Pacific, also how Matt went to make [the partner] the fall-boy for his fraudulent practices by way of making a fabricated fraud complaint that resulted in [his partner] being declared bankrupt.

[68] The post's evident meaning, that Mr Blomfield falsely alleged a fraud against his business partner, and in that way caused the partner's bankruptcy, is false and seriously defamatory.

Assessment of compensatory damages, including aggravated damages

Principles

[69] As findings of liability establish that defendants' statements are false and defamatory, judgments favourable to plaintiffs are their primary vindication. The verdict itself is said to go some way to "[restore] the plaintiff's reputation".[23]

[70] General, or compensatory, damages are awarded to restore a plaintiff to the position they would have occupied had the defamation not occurred:[24]

> 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.

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23 *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [32].

24 At [31] citing Sir Bingham MR in *John v MGM Ltd* [1997] QB 586 (CA) at 607–608.

[71] The Court of Appeal has recognised that damages can be difficult to measure in financial terms when intangibles such as reputation, dignity and peace of mind are in issue. While damages in defamation are theoretically assessed on the basis of impairment to reputation, the common law has awarded such relief without proof of actual reputational effect. Such damages "are an estimate, however rough, of the probable extent of actual loss a person has suffered, and will likely suffer in the future".[25]

[72] However, the Court has also endorsed Sir Thomas Bingham MR's summary in *John v MGM Ltd*, which suggests that consideration be given to various aspects:[26]

> 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.

[73] While the assessment is necessarily a subjective exercise, "it must be kept within reasonable bounds".[27]

[74] The appropriate quantum of compensatory damages may increase in light of a defendant's aggravating conduct. The Court of Appeal addressed the aggravation of damages in *Siemer v Stiassny* and more recently in *Williams v Craig*. In *Siemer*, Hammond J said:

> [51] As a general proposition, aggravated damages are additional damages which are awarded to compensate for injury to the plaintiff's feelings or dignity where that sense of injury has been exacerbated by the manner in which, or the motive with which, the defendant committed the defamatory act, or by how the defamation defendant behaved towards the injured plaintiff, particularly after the tort had been committed.

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25 *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361 at [48].
26 *Williams v Craig*, above n 23, at [31], citing *John v MGN Ltd*, above n 24, at 607–608.
27 *Williams v Craig*, above n 23, at [32].

[75] He went on to cite, as a "classic statement of principle", the following remarks of Lord Devlin in *Rookes v Barnard*:[28]

> ... [i]t 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 [or judge] can take into account in assessing the appropriate compensation.

[76] In *Williams v Craig*, the Court of Appeal characterised aggravated damages as appropriate where:[29]

> … the defendant has acted towards the plaintiff in a manner which compounds or increases the effect of the original defamation. The defendant's behaviour after the original publication, including in conducting his or her defence, can operate in this way.

[77] Aggravating factors may therefore include a defendant's motive, including the presence of malice or ill-will in making the defamatory statements, and a defendant's actions afterwards, including the way he or she defends an action.[30] In either event, the act must exacerbate the injury to the plaintiff.

[78] In *Siemer*, the Court of Appeal indicated the preferred approach in quantifying damages is to arrive at a lump sum award for general damages without specifying a separate sum arising from aggravating conduct.[31] It is the totality of the award which is of primary significance rather than the individual components which constitute it.[32] On that basis, it approved the five-point analytical framework adopted by Cooper J (as he then was) at first instance, calling for an assessment of each of the following factors:[33]

(a) the nature of the defamatory statements;

(b) the extent of publication;

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28 *Siemer v Stiassny,* above n 25, at [52], citing *Rookes v Barnard* [1964] 1 AC 1129 (HL) at 1221.
29 *Williams v Craig*, above n 23, at [33] (footnotes omitted).
30 *Siemer v Stiassny*, above n 25, at [51].
31 At [73].
32 At [56].
33 At [30] and [66].

(c) the injury to the plaintiff(s);

(d) the damage to reputation; and

(e) the defendant's conduct.

[79] I will adopt the same framework in this case. However, I will assess the question of reputational damage prior to the question of injury. As reputational damage can be seen as a form of injury, indeed is the primary injury of concern in defamation cases, I interpret the framework's reference to injury as a reference to additional injury in other forms.

Nature of defamatory statements

[80] I have found eight of the nine blog posts about which Mr Blomfield complains to be false and seriously defamatory. In summary, these posts asserted that Mr Blomfield:

(a) participated in a conspiracy to defraud the charity Kidz Can, including by seeking to shift blame unfairly onto Mr Powell (Post One);

(b) "is a psychopath" and a "pathological liar" (Post Two);

(c) was assisted by others to engage in "[d]rugs, fraud, extortion, bullying, corruption, collusion, compromises, perjury, deception, [and] hydraulic-ing" (Post Four);

(d) paid a business consultancy a $10,000 bribe or other form of financial inducement to undertake their services inappropriately (Post Five);

(e) took part in the theft of assets of a company in liquidation (Posts Six and Seven), and lied and made vexatious complaints to authorities (Post Seven);

(f) misappropriated money paid to a company, committing criminal offences serious enough to justify terms of imprisonment (Post Eight); and

(g) falsely alleged a fraud against his business partner, in that way causing their bankruptcy (Post Nine).

[81] The only blog post I have found merely to involve moderately serious defamation is Post Three. Post Three asserted that Mr Blomfield sent a journalist confidential court documents.

Extent of publication

[82] As stated above, Whale Oil's website claimed in May 2012 — the month in which its defamatory series about Mr Blomfield commenced — that it had around 317,000 visitors per month. At the time, it was the highest ranking blog site in New Zealand by both page views and visitors. Whale Oil's defamatory statements were published extensively.

[83] As online publications, each of Whale Oil's posts remained available, and were effectively re-published each time a visitor accessed them, until taken down and then purged from the caches of publicly accessible search engines. Until then, the posts were accessible by search engine and by following links written into other webpages such as other posts in the series, which Whale Oil frequently linked for the purpose of presenting them as a series.

[84] Whale Oil asserted that it had removed the posts in October 2012, when undertaking to the District Court at Manukau there would be no re-publication pending the outcome of the litigation. By and large, this was correct. However, certain links to defamatory posts remained operable for a significant period thereafter, and became the subject of proceedings against Whale Oil for contempt of court (see further below).

[85] For present purposes, I proceed on the basis the posts were fully available to the public between their initial publication date and 1 October 2012.

[86] Another dimension to the posts was that they invited commentary from readers. As mentioned above, comments occasionally were to the effect that the source material did not justify the vitriolic assertions Whale Oil persisted in making allegedly in reliance upon it. But much more frequently, the comments applauded Whale Oil in its campaign and were even more abusive towards Mr Blomfield than Whale Oil had been.

[87] I find that Posts Two to Nine can only have been published for the ancillary purpose of fostering abusive and unjustified comments about Mr Blomfield by commentators.

Damage to reputation

[88] When the posts were first published in May and June 2012, Mr Blomfield had been an undischarged bankrupt for around two years. When bankrupted, he owed around $4.1 million, of which around $1.5 million was owed to financial institutions and $1.3 million to his family trust. In light of the insolvent liquidation of companies he had formed, he had been banned from being a director or promoter, or being concerned in or taking part in the management, of a company.[34]

[89] Naturally, these matters must be considered when assessing the reputation Mr Blomfield held in May 2012, when Whale Oil's posts commenced to harm that reputation. Although Mr Blomfield's bankruptcy occurred in the aftermath of the GFC, they satisfy me that Mr Blomfield's reputation is likely to have been one of a person prepared to conduct substantial entrepreneurial activities without particular regard for the risks faced by business partners and commercial third parties.

[90] However, carelessness in business is very different to theft. And it stands apart from a person's inclination to be truthful, law-abiding and fair, not only in business but in other facets of life.

[91] Overall, I consider Whale Oil's defamatory posts to have amounted to a wholesale attack upon Mr Blomfield's personality. Of their nature, they will have

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[34] Refer: power of Registrar or Financial Markets Authority to prohibit persons from managing companies, Companies Act 1993, s 385.

caused him serious injury in his professional and personal reputation, exposing him to ridicule and contempt, and causing extreme embarrassment and distress.

[92] Mr Blomfield in his evidence identified several businesses that had been willing to engage him as a contractor despite his bankruptcy, but which declined further dealings following Whale Oil's posts. I find that unsurprising, albeit regrettable, and part and parcel of the destruction of his professional reputation.

[93] Similarly, Mr Blomfield also called evidence from associates Justin Boersma and Darryl Parsons, who came to know him first in business and then as friends. They spoke highly of his personal qualities. Their evidence confirmed that Mr Blomfield's bankruptcy caused a serious set-back in his professional life, but that significant additional damage was caused professionally, and personally, by Whale Oil's publications. They have each observed Mr Blomfield's circle of friends reduce, and his career options narrow.

Other injuries

[94] In May 2012, notwithstanding the ban against being engaged in company management, Mr Blomfield was working in business consultancy in accordance with specific consents issued by the Official Assignee. The posts commenced, and by the end of that month the Official Assignee's consents had been withdrawn. Mr Blomfield took proceedings against the Official Assignee, and reached a settlement which involved him being granted permission to be self-employed. But he had lost two months' income. I infer this loss of income was caused by Whale Oil's defamatory posts.

[95] In April 2014, Mr Blomfield was physically injured in the course of a home invasion by a man with a shotgun, which was discharged, hitting the side of his house. Mr Blomfield regards Whale Oil's publications as the cause of the attack. He points to the receipt by him and by his partner of numerous threatening email, SMS and Skype messages, sent after (but not before) Whale Oil's posts, including messages referring to those posts. However, there is no specific evidence of the intruder's motivations, and in its absence I am not prepared to infer that Whale Oil's posts caused his offending. I put this event to one side.

[96] However, the evidence more generally is sufficient to establish that the reputational damage caused to Mr Blomfield by Whale Oil's posts has had a significantly negative impact upon his family, interfering with the enjoyment of their lives lived within local and school communities, in other ways not specifically related to the home invasion. I consider it appropriate to characterise this consequence as involving additional injury to Mr Blomfield.

Defendants' conduct (in publishing the posts)

[97] As stated above, Whale Oil based its series of posts on material held within a filing cabinet of documents and a hard drive, left by Mr Blomfield in an office he had shared with Mr Powell. Mr Blomfield complained to the police that Whale Oil was working from stolen property.

[98] I am not aware of Whale Oil ever complying with the Court's order to identify the person(s) from whom it received the material upon which its posts were based. When making that order, Asher J wrote that it appeared that Whale Oil had obtained the materials unlawfully, and that a personal vendetta had driven the disclosure to Whale Oil.[35] In light of the evidence put before me, including in particular the nature of the posts themselves, I have no difficulty finding that to be the case, and that Whale Oil knew it.

[99] Further, the way in which the posts misrepresented the material establishes that Whale Oil chose to facilitate that personal vendetta by way of its defamatory post series, on occasions knowing its allegations to be false, and on others being at least reckless as to their falsity.

[100] Whale Oil portrayed its post series as a campaign designed to serve the public interest by exposing inappropriate behaviour in business. Given the post series was false and defamatory, it did not do so.

[101] Mr Blomfield argued that Whale Oil must have been paid to publish the posts. He pointed to a photograph of Mr Slater in Las Vegas, taken when it appears

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35 *Slater v Blomfield* [2014] NZHC 2221 at [138]–[139].

Mr Powell and other associates were holidaying there, suggesting Mr Slater was being hosted. However, the evidence is insufficient to establish that Whale Oil received a financial advantage specifically for publishing the posts. That said, it is clear from the fact of their publication that Whale Oil expected to derive some benefit, whether in terms of attention, notoriety, enjoyment of others' misfortune, or otherwise.

[102] Mr Blomfield called and spoke with Mr Slater within days of the first posts, asking him to stop and suggesting meeting to discuss matters. Mr Slater declined to meet, and did not stop publishing material defamatory of Mr Blomfield until several months later, these proceedings having been issued. While the inaccuracy of the posts is apparent upon careful review of the source material, this confirms that Whale Oil was not minded to revisit the question of accuracy.

Defendants' conduct (in response to defamation proceedings)

[103] As indicated above, Mr Blomfield sought to initiate proceedings in the District Court at Manukau during June 2012. Extraordinary delay has preceded the delivery of this judgment.

[104] Whale Oil's conduct, prior to withdrawing from an active role in defending the case, is the cause of much of the delay. That conduct includes the following:

(a) Whale Oil's first statement of defence filed in response to Mr Blomfield's claim admitted publishing the posts in question. However, it denied that the publications bore the defamatory meanings that Mr Blomfield alleged, and it asserted the affirmative defences of truth and honest opinion.

(b) As indicated above, Mr Blomfield applied in the District Court for an order requiring Whale Oil to identify who had given it the hard drive and other materials on which its posts were purportedly based. The District Court granted the order in September 2013.[36] However, Whale Oil appealed to this Court. In September 2014, Asher J found Whale

[36] *Blomfield v Slater* DC Manukau CIV-2012-092-1969, 26 September 2013.

Oil to be entitled to the presumptive protection of journalists' confidential sources provided by s 68(1) of the Evidence Act 2006, notwithstanding the criticisms that could be made of its style and modus operandi.[37] But his Honour went on to find that the presumptive protection had been overcome in the circumstances of this case, where it appeared that Whale Oil had obtained the materials unlawfully, and that a personal vendetta had driven its disclosure to Whale Oil.[38] The High Court similarly ordered Mr Slater to identify his source.

(c) Whale Oil applied for leave to appeal Asher J's ruling. In August 2015, Mr Slater swore an affidavit in essence confirming his intention to defend the proceeding by establishing the truth of his allegations about Mr Blomfield. He expressly maintained his assertions that Mr Blomfield is a habitual liar, thief and violent criminal. As indicated above, Mr Slater eventually failed to state properly how he intended to prove these assertions.

(d) Whale Oil asserted that it had removed the posts in October 2012, when undertaking to the District Court at Manukau there would be no re-publication pending the outcome of the litigation. However, in September 2015 Asher J found Whale Oil to have acted in contempt of court in seven ways: by breaching the undertaking not to issue a further publication concerning Mr Blomfield six times; and by breaching the confidentiality of a February 2015 judicial settlement conference.[39] At the time, Asher J observed that while the defamation proceeding was moving "very slowly" and the parties did not seem to be "pushing hard for trial", it was Whale Oil's appeal against his source disclosure order which was the then impediment to progress.[40] His Honour imposed penalties amounting to $1,500.

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37 *Slater v Blomfield*, above n 35, at [62], [83], and [93].
38 At [138]-[139].
39 *Blomfield v Slater* [2015] NZHC 2239 at [46].
40 At [59].

(e) In February 2016, Asher J found Whale Oil had further breached its non-publication undertaking in four additional respects, and again imposed a total penalty of $1,500.[41]

(f) In July 2017, Heath J dismissed Whale Oil's application to strike out this defamation proceeding on the basis of delay.[42] His Honour observed that the case had (in 2017) "taken so long to get to trial" largely because of the delay in resolving whether Whale Oil might claim the s 68(1) protection.[43] Having been unsuccessful before Asher J, Whale Oil had applied for leave to appeal but eventually abandoned that application in May 2016. There were also the proceedings relating to Mr Slater's contempts. Putting to one side those reasons for delay, the delay for which Mr Blomfield was responsible was insufficient to justify a strike out.[44]

(g) In May 2018, Lang J declined an application by Mr Blomfield for summary judgment, and directed that Whale Oil should have a final opportunity to amend its pleadings so that its claims that its posts were either true, or if not, at least amounted to honestly held expressions of opinion, were set out separately as required by the Defamation Act.[45]

(h) When Lang J issued these rulings, the context included that the substantive defamation trial had been set for the four weeks commencing in October 2018. Regrettably, the trial did not then proceed. Instead, Whale Oil filed further interlocutory applications seeking security for costs and leave to file further amended statements of defence. Although Whale Oil had filed a (third) amended statement of defence, they had not taken up the "final opportunity" granted by Lang J, by pleading their defences of truth and honest opinion separately, at a time when they could have done so without seeking the

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41 *Blomfield v Slater* [2016] NZHC 149 and *Blomfield v Slater* [2016] NZHC 210.
42 *Blomfield v Slater*, above n 1.
43 At [26].
44 At [28].
45 *Blomfield v Slater*, above n 2, at [75].

Court's leave. In September and October 2018, Davison J dismissed Whale Oil's various applications.[46]

(i) The consequence of Whale Oil's failure to state its case properly was that it could not be permitted to advance defences of truth or honest opinion during the trial, and much of the evidence Whale Oil had briefed was inadmissible. Whale Oil filed an appeal to the Court of Appeal against Davison J's judgment, and applied to stay the commencement of the October 2018 trial pending the outcome of that appeal. Justice Davison granted the stay application, taking the view that proceeding to trial might result in wasted time and expense for both parties should Whale Oil succeed with their appeal.[47]

(j) On 27 February 2019, Mr Slater was adjudicated bankrupt upon his own application. Social Media Consultants Limited entered liquidation on 25 March 2019. Their appeal to the Court of Appeal was abandoned on 14 March 2019.

[105] Overall, I am satisfied that Whale Oil took steps designed to obstruct, rather than facilitate, the just determination of Mr Blomfield's defamation case against it. Putting aside the particular contempts of court which have been the subject of specific monetary award, I consider the balance of Whale Oil's obstructive behaviour seriously to aggravate the quantum of damages that should otherwise be awarded.

Comparable cases

[106] I intend here to review a selection of what I regard as comparable cases, recognising that in the end quantum is for me to decide as if a jury question, having proper regard to the desirability of consistency.[48]

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46 *Blomfield v Slater* [2018] NZHC 2781.
47 *Blomfield v Slater* HC Auckland CIV-2013-404-5218, 19 October 2018, Minute of Davison J.
48 *Lee v The New Korea Herald Ltd* HC Auckland CIV-2008-404-5072, 9 November 2010 at [72].

Lee v The New Korea Herald Ltd

[107] In *Lee v The New Korea Herald Ltd,* a businessman prominent within the Korean community in New Zealand sued the publishers of a Korean language newspaper in defamation.[49] Mr Lee was awarded the sum of $250,000 in compensatory damages.[50] Justice Heath considered the following factors to justify a "significant award":[51]

(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.

[108] Against those factors, Heath J took the following matters into account in mitigation:[52]

(a) criticisms made of Mr Lee in the judgment of a Fijian court;

(b) the possibility that the articles appeared more serious in English translation than as published in Korean; and

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49 *Lee v The New Korea Herald Ltd*, above n 48.
50 At [75] and [78(a)].
51 At [73].
52 At [74].

(c) the genuine (if misguided) nature of the publishers' views.

[109] In my view, *Lee* featured comparable but significantly less serious circumstances to those of Mr Blomfield's case. The articles in *Lee* were published in a newspaper, the reach of which (with its circulation of about 3,000 people) was much smaller than Whale Oil's 317,000 visitors per month, even allowing for the likelihood of multiple website visits by the same individual. Further, the articles generally alleged that the plaintiff had been arrested, tried and convicted of criminal offences, was involved in dishonest and fraudulent practices (including bribery of public officials) and had acted unethically or immorally. These allegations might be described as going further than the allegations of fraud and dishonesty made by Whale Oil against Mr Blomfield, in the sense that they falsely asserted criminal convictions for such matters. But the allegations against Mr Blomfield also extended to other forms of criminality, and more generally against his personality.

Craig v Slater

[110] In *Craig v Slater*, Edwards J assessed the appropriate quantum of damages arising from another defamatory campaign undertaken by Whale Oil.[53] Justice Toogood in this Court, and then the Court of Appeal, had found Whale Oil to have defamed another businessman, the founder of the Conservative Party, Colin Craig.[54] It fell to Edwards J to determine damages in line with the Court of Appeal's judgment, as Toogood J had since retired.

[111] I referred above to Mr Slater's self-petitioned bankruptcy commencing in February 2019, and to Social Media's entry into liquidation in March 2019. These events occurred within months of the delivery of Toogood J's judgment against them in *Craig v Slater*. The consequence was that, in common with the awards I intend to make in this case, the awards Edwards J made in *Craig v Slater* were unlikely to be satisfied.[55]

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53 *Craig v Slater* [2021] NZHC 30.
54 *Craig v Slater* [2018] NZHC 2712; and *Craig v Slater* [2020] NZCA 305.
55 *Craig v Slater,* above n 53, at [2].

[112] Justice Edwards awarded a sum of $325,000 (encompassing both general and aggravated damages). Whale Oil had targeted Mr Craig's sexual morality, his professional character, and his personal integrity. Nine of the 10 defamatory statements were contained in posts on the Whale Oil website. Again, Mr Slater refused to apologise and pleaded the truth of his allegations. He published an assertion that there was a second victim of sexual immorality despite having no genuine belief in their existence. The allegations of electoral fraud made in respect of Mr Craig were seen as particularly serious for the leader of a political party.

[113] On the other hand, Mr Craig's reputation had already been somewhat tarnished by a public complaint of misconduct made against him by his former press secretary, and by other non-defamatory publications about him, prior to Whale Oil's defamatory publications commencing.

[114] In arriving at the figure of $325,000, Edwards J found an award "considerably less" than that in *Karam v Parker* (discussed below) to be justified, the latter case being more serious than that before her.[56]

Karam v Parker

[115] In *Karam v Parker*, Courtney J awarded $525,000 in proceedings stemming from the publication of around 50 defamatory statements published to a Facebook page and website established by one defendant, and to those and other sites by the other defendant, over a period of four years.

[116] Mr Karam had enjoyed a significant and positive reputation before becoming known for supporting David Bain through his appeal against conviction and retrial on charges of murdering his parents and three siblings. The Facebook page and website were established as part of what Courtney J described as a "full scale assault" on the plaintiff's reputation, which the Judge found caused great distress. Mr Karam was accused of, among other things, dishonesty in his motivations, a lack of integrity in his dealings with expert witnesses and with Mr Bain, and fraud in relation to the Legal Services Agency.

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56 *Karam v Parker* [2014] NZHC 737.

[117] The defendants both pleaded truth as an affirmative defence and their actions that followed meant that Mr Karam was subjected to cross-examination by one of them.

[118] In comparing the present case to both *Craig v Slater* and *Karam v Parker*, I find this case to be more serious than the former and only marginally less serious than the latter.

[119] Mr Blomfield's evidence satisfied me that the personal impact of the defamatory statements published about him, relentlessly alleging a wide range of criminal activities, was extreme. I have described the nature of Whale Oil's campaign against Mr Blomfield as amounting to a wholesale attack. It was undertaken maliciously, for reasons other than genuine belief in their truth. In this regard, the case is of similar seriousness to *Karam*. In *Craig*, Edwards J observed that Toogood J and the Court of Appeal did not describe the impact of the defamatory statements in terms comparable to those in *Karam*.[57]

[120] On the other hand, Mr Karam's reputation, independently of the defamatory statements, was unblemished. Here, Mr Blomfield's reputation had no doubt been undermined by his prior bankruptcy, in the manner and to the limited extent discussed above (at [88]–[90]). In my view, the undermining of Mr Craig's reputation by the independent allegations of misconduct made against him, later supported by factual findings of sexual harassment, was at least as substantial.

Overall compensatory damages assessment

[121] Overall, I consider it appropriate to identify the sum of $475,000 as that necessary to compensate Mr Blomfield for the damage caused by Whale Oil's conduct, being conduct comprised firstly in publishing the defamatory statements, and then in responding to this proceeding in the manner described above. As should be apparent, that sum represents both general and aggravated damages.

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[57] *Craig v Slater,* above n 53 , at [69].

Punitive damages and costs?

[122] Punitive damages, also known as exemplary damages, are a distinct category, provided for in s 28 of the Defamation Act:

> **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.

[123] Awards of punitive damages are rare. They are only available where the defendant's conduct is such that punishment beyond an award of general damages is required.[58]

[124] I consider it clear that Whale Oil indeed acted in flagrant disregard of Mr Blomfield's rights. However, even where the s 28 threshold is met, the question whether punitive damages should be awarded remains an open one. The individual circumstances of each defendant require consideration.

[125] Here, Mr Slater's bankruptcy and Social Media's liquidation occurred nearly five years ago. The case has since remained on foot primarily for the purpose of offering Mr Blomfield, if proven, some level of personal vindication. That vindication now resides in the award of compensatory damages to be made at the conclusion of this judgment.

[126] By contrast, there does not seem to me to be any point in seeking to punish Whale Oil by means of a nominal award of punitive damages which will not be met.

[127] For that reason, I decline to award punitive damages. Nor will there be an award of costs.

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[58] *Williams v Craig*, above n 23, at [34].

Result

[128] I grant Mr Blomfield judgment, and award compensatory damages in the sum of $475,000, payable by each of Mr Slater and Social Media, jointly and severally.

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Johnstone J