

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 40 of 2018

BETWEEN: **PRANIL GOUNDAR** of Lot 5 Levuka Street, Samabula, Suva, Registered Tax Agent.

PLAINTIFF

AND: **SUSHEEL DUTT** of 69 Scott Street, Blenheim, New Zealand, Chartered Accountant trading as **PARKERS BUSINESS SOLUTIONS FIJI** having its registered place of business at Suite 4, Level 1, QBE Centre, 33 Victoria Parade, Suva.

DEFENDANT

Before: **Hon. Mr. Justice Vishwa Datt Sharma**

Counsel: **Mr. Sharma N.** for the Plaintiff
 Ms. Dutt S. for the Defendant on instruction of Jiten Reddy Lawyers.

Date of Judgment: **30th May, 2024**

JUDGMENT

[Assessment of Damages filed on 20th June, 2018]

A. INTRODUCTION

[1] This is the Plaintiff's application seeking for Assessment of Damages in respect of his substantive claim for 'Defamation' in respect of a Letter allegedly published by the Defendant with the Express intention of causing harm and damages to the character of the Plaintiff and to stop the Plaintiff from being registered as a member of the Fiji Institute of Accountants and that the Defendant's actions were malicious.

[2] Thus, the application before Court for Determination of an assessment of Damages as sought for accordingly.

B. BACKGROUND

[3] The Plaintiff commenced proceedings on 16th February 2018 claiming for Damages for Defamation.

[4] On 11th April 2018, the Plaintiff filed a Praecipe and search for Statement of Defence.

[5] With No Statement of Defence having been filed and served by the Defendant, **the Interlocutory Judgement was sealed on 17th April 2018 against the Defendant to pay the Plaintiff Damages to be assessed as sought for by the Plaintiff in his Writ of Summons and the Statement of Claim.**

Plaintiff's Contention and Submission

[6] An undated letter was published to Fiji Institute of Accountants Council [FIA Council] and Fiji Institute of Accountants [FIA] as per paragraph 6 of the Plaintiff's Statement of Claim for 'libel' in relation to the Plaintiff's fraudulent activities. The Letter read as follows:-

'FIA and the FIA Council

Re- Pranil Goundar

Dear sir,

It is with regret that I write this to the FIA and the council in relation to Mr. Gounders **Fraudulent activities**. These activities are now investigated and the matter is in front of the high Court.

Mr Goundar was given the role of establishing the business in FIJI for Parkers Business Solutions (FIJI) In terms of day to day work and was a signatory to the bank account.

The following are some serious issues that was brought to our attention in November 2017. The issues have not only brought my reputation to disrepute but a mark on FIA.

1. Bank and Cheques

He wrote cheques to suppliers knowing there was no funds in the bank. Despite advice from bank and me he continued to write cheques that bounced. The Police and Lawyer advise that this an act of fraud. This not only passes a cloud of dust on his integrity and honesty, but it is totally unprofessional. Forgery is a serious crime.

2. Audited Financial Statements

Mr. Goundar amended the audited financial statements of a client and file the false financial statements to FRCA. When the following year work was being done it was discovered that the false accounts were filed.

3. The Car

Mr. Goundar tried to clearly defraud the people at the Carpenters Motors. He tried to trade in the car and buy one in Shailer's (his girlfriend) name, He advised them that he was overseas and have made a property investment. He tried to trade in the car. The people at CML asked for a minute from the business as they noticed the car was in my name. They were very disappointed that he was trying to pull a fast one on them. This has been classed as an act of fraudulent behavior. This is a class A Charge for theft of a vehicle by deception.

This is a clear act of fraud.

4. VAT Returns

He filed false vat returns for the period, 2015 and 2016 ad 2017. He not only stole the funds received in cash those funds were not returned for Vat. He claimed the personal expenses for VAT that he was fully aware that was not permitted.

5. Work for Cash

Significant work was done for cash in 2015, 2016 and 2017. He stole this money from the business. He did not pay any of the funds into the business account. The sum involved could be as much as **\$93,000**. We are currently verifying this for the court.

6. Financial Statements

When I requested the accounts for the business he sent me false set of accounts which he had manipulated to his advantage. We prepared the accounts based of the VAT returns that he has filed and the accounts were significantly different from what be provided to us.

7. Unauthorized Funds

He spent significant amount of money for personal use. Cash he withdraw was used for food, beer, and restaurant expenses, the receipts are in the vat file which he has claimed vat for knowing that is not allowed. He has misused the funds of the business.

8. Debts

He has left significant debts unpaid and this has tarnished our reputation as a chartered accountant. He has advised numerous suppliers false information even at the bank. The bank manager advised me that Pranil has advised that I was taking all the money when I had drawn no funds. The bank manager was very upset when he found out the Pranil had lied to him while operating the business account.

This has not only tarnished my name but has made the general business wary of the way we run business. This is not the way we want to be seen and as such my reputation has been tarnished. The business debt could have been paid had you not used the funds for private use.

9. Claim (These amounts are increasing as we discover more information)

i)	Cash for 2015	Stolen	\$9,500.00 + \$14500 to verify
ii)	Cash for 2016	Stolen	18,516.00 + up to \$31,000
iii)	Cash for 2017	Stolen	10,962.75 + \$16,000
iv)	Overdrawn current account		\$4,549.00
v)	Debts of Business		<u>93,000</u>
	Total so far		<u>\$186,527.7500</u>

For damages a he has trashed my name at the following
 FRCA, FNPF, Carpenter Motors, BSP Bank for writing dud cheques.
 \$100,000

My lawyer has filed papers today at the high court.

I recommend that the council hold o processing his application for CA, until such fraud charges are cleared. It is my understanding that the advice received is that the forgery charge alone can send him to prison.

(signed)

Yours sincerely

Susheel Dutt CA, CPP, MBA

First floor Suite 4, QBE Building, Suva."

- [7] The Plaintiff was an accountant by profession and the undated letter published by the Defendant caused and suffered injuries to his credibility and reputation and has been brought to the Public scandal, odium and contempt with the Fiji Institute of Accountants putting on hold the Plaintiff's application to be a Chartered Accountant under the Fiji Institute of Accountants Act.
- [8] The Letter has caused harm and damages to the Plaintiff's character and to stop the Plaintiff from being registered as a member of the Fiji Institute of Accountants.
- [9] The Defendant is also a qualified Chartered Accountant and fully aware of what he was doing.
- [10] Sought for General Damages, Exemplary Damages, a public apology and a retraction of the letter issued to the Fiji Institute of Accountants for such apology to be published in each of the 2 daily newspapers with $\frac{1}{8}$ of page, legal costs pre and post judgement of 8%, accordingly.

Defendants Contention

- [11] No written submission filed.

- [12] Police Report against the Plaintiff, investigation incomplete as of yet.
- [13] Fiji Institute of Accountants is professional body who looks at how accountants conduct work.
- [14] Letter written not defamatory but a complaint to Fiji Institute of Accountants.
- [15] Both Plaintiff and Defendant are members of Fiji Institute of Accountants - complaint was made to Fiji Institute of Accountants.
- [16] Do not deny making the Statements as per letter written but it is not defamatory.

C. DETERMINATION

- [17] No doubt, the Defendant when served with the Plaintiff's Statement of Claim alleging that an undated Letter written by the Defendant to Fiji Institute of Accountants and Fiji Institute of Accountants Council falsely and maliciously wrote, printed and published the letter as appears at paragraph 6 of the Plaintiff's Statement of claim and reproduced at paragraph 6 hereinabove.
- [18] The Defendant failed to file and serve an acknowledgement and/or a statement of Defence to counter the Plaintiff's allegation and claims.
- [19] Accordingly, Interlocutory Judgment was eventually entered against the Defendant on 17th April 2018 in absence of any Statement of Defence to counter the Plaintiff's allegation against the Defendant.
- [20] The Defendant subsequently filed Summons to seek for an order for Leave to Appeal and stay and was unsuccessful.
- [21] The Defendant's contention is that whilst he admits writing the undated letter. However, it was written as a complaint to Fiji Institute of Accountants and Fiji Institute of Accountants Council and was not Defamatory in its nature.
- [22] The Plaintiff's Contention is otherwise.
- [23] The need to balance the rights to personal reputation against the right to free speech has been the cornerstone of the development of the Law relating to 'Defamation'.
- [24] In **Jone v Skelton** [1963] 1 WLR 1362 at 1373, Lord Morris pointed out "**that the search for simplicity in this branch of the law, has proved to be elusive.** There have been many **Judicial attempts to define** what would be **classified as a 'defamatory' statement.** Halsbury's would

be a good starting point, and a 'defamatory' statement is defined as one:

1. Which tend to lower a person in the estimation of is right thinking members of society generally or to be shunned or avoided to expose him to hatred, contempt, or ridicule, or to convey an imputation on him disparaging or injurious to him in his office.

[25] Prima facie, the Statements or contents of the Defendant's undated written letter to Fiji Institute of Accountants and Fiji Institute of Accountants Council tantamount to 'Defamatory' in Nature, unless and until the Defendant proves the truth of the allegation made in the Defendant's Statements/Contents therein.

[26] The Defendant has not countered the allegation and/or claim by filing/serving any Statement of Defence rather his failure led to entering and sealing of an interlocutory judgment against him, in terms of the Plaintiff's Statement of Claim, Adjudging the Defendant to pay the Plaintiff Damages to be assessed for defamation under different heads and sought for retraction of the Statements made therein.

[27] Thus, I proceed to assess the damages where the Interlocutory Judgment was obtained and sealed by the Plaintiff against the Defendant as sought for in the Plaintiff' Statement of Claim.

[28] The parties to the proceedings did not call witness(s) to substantiate the allegation, reputation and damages suffered rather made submissions to support the same.

D. GENERAL DAMAGES.

[29] The Plaintiff was an Accountant by profession and a registered TAX agent with Fiji Revenue and Customs Services. The Plaintiff was employed with the Defendant from July 2015 to December 2017.

[30] Some disputes arose between the Plaintiff and the Defendant and resulted in the Plaintiff filing and commencing Suva High Court Civil Action No. 377 of 2017 wherein the Plaintiff claimed for assessment of damages in respect of defamation and for unpaid salary and outstanding advances to the Defendant and use of the Plaintiff's Chattels.

[31] In order for the Plaintiff to allege that he has suffered damages, he has the burden to prove not only that he suffered the damages but also its extents and/or amount of damages.

[32] The undated letter written to Fiji Institute of Accountants and Fiji Institute of Accountants Council and not of complaint been proved to Court that the said letter was published anywhere which had the express intention of causing harm and damages to the character of the Plaintiff

and to stop the Plaintiff from being registered as a member of the Fiji Institute of Accountants [FIA] or that the Defendant acted maliciously.

[33] Reference is made to the case of **Gatley** (*Supra*) at paragraph 6.1 on pages 187. Outlines the general principle of publication."

"No civil action can be maintained libel or slander unless the words complained of have been published.

In order to constitute publication the matter must be published by the defendant to (Communicated to) a third party that is to say at least some person other than the claimant."

[34] Neither the Plaintiff nor the Defence called any witnesses, including the Plaintiff and the defendant to testify before this Court when the Application/summons seeking assessment of damages proceeded to hearing rather furnished court with either written submissions and both parties made oral submissions.

[35] I reiterate that the Defence admitted making these remarks in the undated letter but was written to the preferable body, Fiji Institute of Accountants (FIA) and Fiji Institute of Accountant's Council (FIA Council) and not published by the Defendant at all.

[36] However, it does not mean that if the plaintiff succeeded in getting an interlocutory judgment in the matter sealed on 07th April 2018 that the Plaintiff should be entitled to Damages. In order for the entitlement to Damages, the plaintiff ought to prove to Court that the words in the undated letter written by the Defendant and complained of was published. It is the damage done to character in the opinion of other men, and not in a party's self-estimation which constitutes the material element in an action for 'libel' or slander, as per Bigalow J. in **Shethl v Van Deusen** (1859) 79 Mass R 304 at 305.

[37] Further the words complained of in the undated letter should be communicated in such a manner that it may convey the 'Defamatory' meaning and tentamount to '**libel and/ or slander**".

[38] I find that the undated letter admittedly written by the Defendant was to the official body of the Fiji Institute of Accountants (FIA) and Fiji Institute of Accountant's Council (FIA Council) accordingly and not published per se.

[39] In **Lewis vs. Daily Telegraph Ltd** 1964 A. C. Page 234, Lord Hodson says that it can even be defamatory to say someone is suspected of an offence and stated at page 275:-

It may be defamatory to say that someone is suspected of an offence. But it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice which reasonable person are supposed to

entertain. If one repeats a rumour one adds one's own authority to it and implies that it is well founded, that is to say, that it is true"

In this case the Defendant reported the matter to the Police where investigation was conducted. It has not been divulged to this Court what transpired in that investigation with regards to the allegation of fraud therein.

[40] For the above-mentioned rational, I find that this Court cannot delve itself into assessing damages as claimed for by the Plaintiff in its Interlocutory Judgment obtained and sealed on 07th April 2018.

[41] Accordingly, the Plaintiff's summons seeking for Damages and other relief as enumerated therein is dismissed in its entirety.

E. COSTS


[42] This matter proceeded to hearing with oral and written submissions furnished to Court. It is only appropriate, just and fair that each party to the proceedings bear its own costs of the application.

F. ORDERS

- i) The Plaintiff's summons seeking for assessment of Damages together with other relief is dismissed in its entirety.
- ii) Each party to bear their own costs of the application accordingly.
- iii) File Closed.

Dated at **Suva** this **30th** day of **May** ,2024.




Vishwa Datt Sharma
PUISNE JUDGE

*cc: Pranil Goundar, Lot 5 Levuka Street, Samabula, Suva.
Nilesh Sharma Lawyers, Suva
Jiten Reddy Lawyers, Nakasi*